

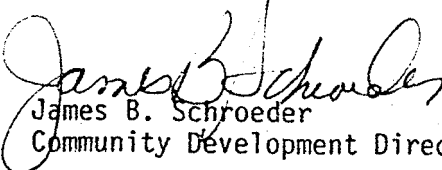
C O U N C I L C O M M U N I C A T I O N

TO: THE CITY COUNCIL
FROM: THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE:
JANUARY 20, 1988

SUBJECT: SET PUBLIC HEARING FOR FEBRUARY 17, 1988 REGARDING PROPOSED AMENDED SIGN
ORDINANCE

RECOMMENDED ACTION: That the **City** Council set a public hearing for Wednesday, February 17, 1988 at 7:30 p.m. to consider the proposed amended sign ordinance as prepared by the City Attorney.


James B. Schroeder
Community Development Director

JBS:amr:jj

COUNCO10
TXTA.02D

NOTICE OF PUBLIC HEARING
TO CONSIDER THE PROPOSED AMENDED CITY OF LODI SIGN ORDINANCE

NOTICE IS HEREBY GIVEN that on Wednesday, February 17, 1988 at the hour of 7:30 p.m., or as soon thereafter as the matter may be heard, the Lodi City Council will conduct a public hearing to consider the proposed amended City of Lodi Sign Ordinance.

Copies of the proposed amended ordinance are available in the City Clerk's office during regular business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., except holidays.

Information regarding this item may be obtained in the office of the Community Development Director at 221 West Pine Street, Lodi, California.

All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the hearing scheduled herein and oral statements may be made at said hearing.

If you challenge the subject matter in court you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, Lodi, at or prior to, the Public Hearing.

By Order of the Lodi City Council

Alice M. Reimche
City Clerk

Dated: January 20, 1988

Approved as to form:

Ronald M. Stein
City Attorney

MEMORANDUM, City of Lodi, Community Development Department

TO: Ron Stein, City Attorney
FROM: Norman tfo, Planner
DATE: January 18, 1988
SUBJECT: Revised Draft Sign Ordinance

Attached is a draft copy of the sign ordinance as revised in accordance with our department's recommendations. This new ordinance does not substantially change the standards established under the old ordinance for on-premise signs. However, it does accomplish several new goals as follows:

- 1) Limits total signage. All signage on a lot would be counted towards a maximum amount allotted on a square footage per lineal frontage basis. As on-premise signs are a practical necessity for a?l businesses, we believe property owners will use their allotment for on-premise as opposed to off-premise signs. This would effectively reduce the amount of off-premise signs. This would effectively reduce the amount of off-premise signage in the city and preclude us from using a spacing requirement or an outright ban on billboards.
- 2) Limits number of free-standing signs. Each lot would be limited to no more than one free-standing sign for obvious reasons.
- 3) Establishes a sign permit requirement. A sign permit would be required for each and every sign in the City. This gives the City greater regulatory authority over the amount and location of signage in its jurisdiction than the current building permitting process which does not cover all types of signs.
- 4) Impose standards on the size of sign structures. The size of sign structures would be limited to no more than 60 percent of the sign. We need to be sure that the size of sign structures are reasonable in relation to the sign area; the current ordinance has no such standards.

Ron Stein
January 18, 1988
Page 2.

We don't anticipate any difficulties in administering these new provisions. All on-premise signs that may become non-conforming as a result of the adoption of this ordinance would be grandfathered in and all off-premise signs that become non-conforming will be amortized over a 7-year period. Our department is in the process of establishing a file record for each of the 40 off-premise signs that may be affected by this ordinance.

NH:dsg

Attachment

SIGNS

ORDINANCE NO. _____

AN ORDINANCE OF THE LODI CITY COUNCIL
REPEALING LODI MUNICIPAL CODE TITLE 17, CHAPTER 17.63
SIGN ORDINANCE AND REENACTING A NEW SIGN ORDINANCE

Sections:

Section 1. Establishment of Ordinance

Article 1. Regulating al7 signs

- Section 2. Title; Effect; Construction
- Section 3. Purpose, Scope, and Authority
- Section 4. Non-commercial Messages
- Section 5. Sign Regulation Definitions
- Section 6. Community Development Director's Powers
- Section 7. Appeals Procedure
- Section 8. Sign Inspection and Responsibilities
- Section 9. Signs on Public and Utility Property
- Section 10. Exempted Signs
- Section 11. Prohibited Signs
- Section 12. Special Standards by Type of Sign
- Section 13. Permits and Enforcement

Article 11. Additional Requirements

- Section 14. General Standards, On-Premise Signs
- Section 15. Special Standards by Zone
- Section 16. Removal or Restoration of All Signs
- Section 17. Continued Use of Non-conforming Signs
- Section 18. Abandoned Signs
- Section 19. Violations
- Section 20. Ordinance Conflicts
- Section 21. Public Notice and Effect

BE IT ORDAINED BY THE LODI CITY COUNCIL.

SECTION 1. Lodi Municipal Code Title 17, Chapter 17.63 regulating signs is hereby repealed and a new sign ordinance is reenacted in its place as follows:

I. REGULATING ALL SIGNS

SECTION 2. TITLE; EFFECT; CONSTRUCTION.

Sections 1 through 21 shall be called sign regulations. These sections shall be liberally construed to effect the purpose of imposing stricter and more precise standards on the number and size of signs, and to effect the Purpose of advancing the declaration of Section 3. These sections shall not be construed or applied in such a way that would give a preference or greater degree of protection to a

sign conveying a commercial message than is given to a sign similarly situated and constructed conveying a non-commercial message. These sections must be construed to apply to all signs, irrespective of the commercial or non-commercial character of the content, except that specific types of commercial signs are to be regulated more strictly. **Any** ambiguity or question shall be resolved by allowing a non-commercial sign the same benefits, exemptions and other preferences that may be given to a commercial sign similarly constructed and situated, or **by** imposing on such commercial sign the same restrictions imposed on the non-commercial sign similarly constructed and situated.

SECTION 3. Purpose, Scope and Authority.

1. The city council finds and declares that the purpose of this chapter is to establish a comprehensive system for the regulation of the leasing out, erection and relocation of signs and/or sign structures. This chapter is not to be interpreted to affect the messages on the signs. it is intended that these regulations:

a) Impose reasonable standards on the number, size, height and location of signs, and facilitate the removal or replacement of nonessential or nonconforming signs and/or sign structures in order to:

- (1) Prevent and relieve needless distraction and clutter resulting from excessive and confusing sign displays;
- (2) Safeguard and enhance property values; and
- (3) Promote the public safety and general welfare.

b) Provide one of the tools essential to the preservation and enhancement of the environment, which is instrumental in attracting those who come to live, visit, vacation and trade, thereby protecting an important aspect of the economy of the city.

c) Eliminate hazards to pedestrians and motorists brought about by distracting signs and/or sign structures.

d) Improve, enhance and preserve the appearance and other aesthetic qualities of the city.

SECTION 4. Non-commercial Messages. Notwithstanding any other provisions of this chapter, any sign sponsor may allocate sign area in either an on-premises or off-premises sign authorized by this Chapter to a non-commercial message.

SECTION 5. Sign regulation definitions.

As used in Sections 2 through 21, unless the context otherwise requires, the words and terms defined in Section 5 have the meanings ascribed to them in that Section.

____ "Abandoned sign" means a sign which has not been maintained in accordance with the provisions of this chapter for a period in excess of 60 days following legal notice to the owner of property and the owner of the advertising display that such sign does not meet, in the discretion of the Community Development Director, minimum maintenance standards.

____ "Advertising display" means any arrangement of material or symbols erected, constructed, carved, painted, shaped or otherwise created for the purpose of advertising or promoting the commercial or

non-commercial interests of any person or entity, located in view of the general public and visible from a public street, and may include signs, billboards, posters, graphic advertising messages, advertising copy, accessory signs and similar displays.

_____ "Advertising message" means any copy, symbol, logotype or graphics which identify, promote or advertise any product, service, business, institution or other commercial or non-commercial interest of any person or entity.

_____ "Advertising structure" means any structure or device erected for the purpose of supporting any sign or other advertising display, and the framework of the sign.

_____ "Allowable sign area" means the total sign area permitted under this chapter for any site or business (see also "Sign Area Computation").

_____ "Amortization" means the elimination of nonconforming signs over a period of time intended to allow the owner to realize the value of his/her investment in the sign.

_____ "Animated sign" means a sign with action or motion, flashing color changes activated by electrical energy, electronic or manufactured sources of supply, but not including wind-actuated elements such as flags, banners or pennants.

_____ "Architectural graphic" means a painted design, mural, relief, mosaic or similar feature which is incorporated into the architectural design of a building and conveys no advertising message.

_____ "Area identification sign" means a permanent, decorative sign used to identify a neighborhood, subdivision, commercial or office complex, shopping district, industrial district or similar distinct area of the community.

_____ "Area of a sign" means the sum total of the geometric areas of the display surfaces which make up the total sign or advertising display. Necessary supports or uprights are excluded.

_____ "Business frontage" means the length of building frontage occupied by an individual building occupant. An occupant may have more than one business frontage if it occupies building frontage facing on two or more streets or public areas.

_____ "City" means the City of Lodi.

_____ "Civic display" means a temporary display of banners, balloons, flags, lights or similar decorations erected on a public street or other public property in connection with a holiday, civic event or celebration.

_____ "Commercial sign" means, when describing the content of a sign, a sign advertising, identifying, directing attention to, or otherwise

relating to commerce and to property, goods or services for sale, lease, exchange or any other transaction where value is given or received by any party to the transaction.

— "Community Development Director" means the Community Development Director of the City of Lodi and/or his/her duly authorized assistants or designees, hereinafter referred to as "Community Development Director".

— "Copy" means that portion of a sign or advertising display which is made up of language, letters, numbers, pictures, or symbols which state a message.

— "Directional sign" means a permanent sign which directs the flow of traffic or pedestrians on private property and which contains no advertising message.

— "Directory sign" means a sign, or a group of signs designed as a single display, which gives information about the location of businesses, buildings or addresses within a residential, office, commercial or industrial complex.

— "Display surface" means the area made available by the sign structure for the purpose of displaying the advertising message or display.

— "Double-faced sign" means a sign with two surfaces against, upon or through which the message is displayed. Both surfaces of a double-faced sign must be parallel to each other and must be tied together into one integral unit with no visible air space between the surfaces.

— "Erect" means to arrange, build, construct, attach, hang, paint, place, suspend, affix or otherwise establish an advertising display.

— "Flashing sign" means a sign which uses blinking, flashing or intermittent illumination or light reflectors, either direct, indirect or internal.

— "Frontage." See "business frontage" and "site frontage".

— "Freestanding sign" means any sign erected upon or standing on the ground, also referred to as a ground sign. For the purpose of this Chapter said signs shall be supported from the ground by one or more poles, columns, uprights or braces.

— "Freeway Information Area" includes that area within the city described as follows: on the west by a line drawn fifty feet west of the west right-of-way line of Cherokee Lane or five hundred feet west of the west right-of-way line of the U. S. Highway 50-99 Freeway, whichever is greater; on the east by a line drawn five hundred feet east of the east right-of-way line of U. S. Highway 50-99 Freeway; and on the north and south by the present city limits or as the same may exist in the future.

"Height of sign" means the vertical distance measured from the adjacent street grade or upper surface of the nearest curb of a street or highway to the highest point of a sign or advertising display.

"Holiday decoration" means any display commonly associated with a local, state, national or religious holiday, and which is not left in place for more than 60 days during any single observance.

"Indoor poster" means a temporary sign or poster displayed inside a window for a period not to exceed 30 days to provide information about a specific product, price, event or activity.

"Inflatable sign" means any device which is supported by air pressure or inflated with air or gas which is used to attract the attention of the public, whether or not it displays any specific advertising message.

"Mobile sign" means a sign attached to or suspended from any type of vehicle, other than normal lettering identifying the business owning or served by the vehicle. Such signs shall not include those normally painted on or attached permanently to business vehicles, mass-transit vehicles, taxicabs or special events signs.

"Noncommercial sign" means, when describing the content of a sign, a sign not conforming to the definition of a commercial sign.

"Nonconforming sign" means any sign and/or sign structure which was lawfully erected prior to the adoption of the ordinance codified in this chapter, or amendments thereto, which would not be permitted under the current provisions of this chapter.

"Off-premises sign" means any sign which identifies, advertises or directs attention to a business, activity, product, service or other commercial or non-commercial interest of any person not located on the premises where the sign is located; or a freestanding structure on which a sign is located, where the sign structure is on a premises, not owned by the owner of the sign structure, or where the sign message is not sponsored by the owner of the premises. The sign may contain a commercial or non-commercial message.

"Official sign" means any sign erected by or at the direction of any governmental agency. Such signs may include public information bulletin boards or kiosks when sponsored by any governmental agency.

"On-premises sign" means any sign which identifies, advertises or directs attention to a business, activity, product, service or other commercial or non-commercial interest of any person located on the premises where the sign is located, or which sign structure and/or sign was erected or built by; and/or the message on the sign is sponsored by the owner of the site of the sign. The sign may carry a commercial or non-commercial message.

"Permanent sign" means any sign permanently affixed at the site, which, from the nature and effect of its proposed composition,

construction, message to be carried or its proposed placement, is intended for continuous display for a period of time greater than 60 calendar days.

"Permit" shall mean a written authorization by the Community Development Director to erect or establish a sign and/or sign structure after compliance with this or other appropriate codes, adopted by the Lodi City Council. The written authorization may be a sign or building permit.

"Person" means a natural person and any organization, association or entity having an existence recognized by law.

"Portable sign" means any sign which is designed and constructed in such a manner that it can conveniently be moved from place to place. This definition shall include, but is not limited to, cardboard, paper, fabric, canvas and plastic banners and flags.

"Premises" means such contiguous land in the same ownership and which is not divided by a public highway, street, alley or right of way.

"Projecting sign" means a sign which is supported by a decorative bracket or hanger and extends at an angle from the face of a building. This definition shall also include any sign which, because of its shape or thickness, extends more than 12 inches from the face of a building when mounted flat against the face of the building, but shall not include a marquee which is designed as an integral part of a building, or any sign which is suspended from or is supported by a wall or building and which projects outward therefrom.

"Project sales sign" means a sign which is erected for the purpose of promoting the sale or lease of property in a residential, office, commercial or industrial project on the site where the sign is located, and which is under construction or has been substantially complete for less than one year.

"Real estate sign" means a sign offering for sale, rent or lease the real property on which it is located.

"Roof" means a horizontal or sloping surface of a building which serves as a cover for the building or its entry, portico or other appurtenances. This definition includes any part of a building which resembles a roof in form or function.

"Roof sign" means any sign located on the roof of a building and either supported by the roof or by an independent structural frame. A sign which is attached flat against the wall of a penthouse or other similar roof structure or architectural blade is not a roof sign.

"Shopping center" means a group of commercial establishments, the perimeter of which is clearly definable, developed on a continuous area of land, planned and developed as a single unit and providing on-site parking appropriate to the number, types and sizes of stores.

_____"Sign" means any structure, symbol, display, device or painting on or in any other manner making representation on or attached to the land, building(s), structure(s), or part thereof. Such structures, displays, symbols, devices or paintings include but are not limited to letters, numbers, words, illustrations, decorations, emblems, trademarks and light; displayed to the public for the purpose of identifying, advertising or promoting the commercial or non-commercial interests of any person, persons, firm, corporation or other entity by conveying an advertising message or attracting the attention of the public. This definition includes all parts of such a device, including its structure and supports and also includes balloons, banners, pennants, flags, lights, reflectors, reflected lights, streamers or other devices which are used to attract the attention of the public, whether or not they convey a specific advertising message. Signs used by public utilities for the safety, welfare or convenience of the public shall be exempt from the provisions of this definition: examples of such signs are: "Danger -- High Voltage." "Public Telephone" or "Underground Cable."

_____"Sign area computation". The area of each sign surface shall be computed by calculating the area within the frame enclosing the letters or material which composes the sign, or, where there is no frame, by calculating the area of the surface upon, against or through which the message is displayed. Where a sign is composed of separate letters which are placed or painted on a building or other similar surface not designed specifically for sign presentation, the sign area shall be computed on the basis of a shape closest to the extremities encompassing individual letters, words, or symbols.

_____"Sign structure" means those parts of a sign designed to support it in place.

_____"Site" means a lot or parcel, or contiguous lots or parcels of land on which a building or complex of buildings is located.

_____"Site frontage" means the linear dimension of a site abutting on a public or private street right-of-way.

_____"Suspended sign" means a sign supported from, located below, or completely covered by a building soffit or permanent canopy.

_____"Street frontage" means the property line of a lot abutting public street right-of-way, excluding alleys to which such property has the legal right of access.

_____"Temporary sign" means a sign made of paper, cardboard, cloth, plastic or similar material having limited durability if exposed to the elements; a sign, irrespective of its durability, intended for display for less than 60 days, and/or a sign without structural support. The sign message on any temporary sign may be commercial or non-commercial or a combination of both. Temporary signs do not include signs carried by a natural person, or changing copy on permanent signs lawfully erected and maintained.

____ "Time and temperature sign" means a sign which displays only the current time, temperature, and/or news of current events and carries no advertising message. A time and temperature sign shall not be considered a flashing or animated sign.

____ "Wall sign" means a sign painted on, attached to, or erected against the face or wall of a building with the face of the sign in a parallel plane with that of the building face or wall.

____ "Wind sign" means any sign, part of a sign or series of signs, designed or erected in such a manner as to move when subjected to wind pressure. Wind sign does not include "suspended signs".

SECTION 6. Community Development Director's Powers/Right of Entry.

1. Authority. The Community Development Director is authorized and directed to enforce all the provisions of this chapter. The Community Development Director may, in his/her sole discretion, permit variations in area and height requirements if it can be shown that such would promote uniformity, architectural compatibility or community aesthetics. No variation shall exceed 20 percent of spacing and height limitations imposed by this chapter.

2. Right of entry. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Community Development Director has reasonable cause to believe that there exists a condition which makes a sign unsafe, he/she may enter the premises upon which such sign is located, at all reasonable times to inspect the sign or to perform any duty imposed by this chapter, provided that:

(a) If the premises upon which the sign located is occupied, the Community Development Director shall first present proper credentials and demand entry; and

(b) If the premises is unoccupied, the Community Development Director shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises, and demand entry.

If such entry is refused, the Community Development Director may pursue every remedy provided by law to secure entry.

3. Inspection. Any sign which is subject to this chapter shall be inspected by the Community Development Director to insure compliance with this chapter.

4. Failure to permit entry. Any owner or occupant or any other person having charge, care or control of any building or premises, who fails or neglects, after proper demand is made to permit entry therein by the Community Development Director for the purpose of inspection and examination pursuant to this chapter, shall have violated this chapter.

SECTION 7. Appeals procedure.

1. Planning Commission. In order to determine the suitability of materials and methods of construction, and to provide for reasonable interpretations of any ambiguous provisions of this chapter, appeals may be taken to the Planning Commission.

2. Appeals. Appeals to the Planning Commission may be taken by: Any person aggrieved by his/her inability to obtain a sign or building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of any zoning regulation or any regulation relating to the location.

3. Time. The time within which an appeal must be made and the form, fees or other procedure relating thereto shall be as specified by resolution of the city council may be amended from time to time.

SECTION 8. Sign Inspection and Responsibilities.

1. Inspection. Every on-premises or off-premises sign and/or sign structure erected in the city is subject to inspection by the Community Development Director, to assure compliance with the provisions of this chapter..

2. Responsibility. The owner of the sign and/or sign structure is responsible for its proper construction, maintenance, repair and compliance with the provisions of this chapter.

SECTION 9. Signs on Public and Utility Property.

1. No person shall paint, mark or write on, or post or otherwise affix, any hand-bill, sign or sign structure to or upon on real or personal property, easements or rights-of-way owned by a public agency or by a privately-owned public utility, any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power or telephone or telegraph or wire pole, or wire appurtenance thereof, or upon any fixture of the fire alarm or police telegraph system or upon any lighting system, public bridge, drinking fountain, life buoy, life preserver, lifeboat or other life saving equipment, street sign or traffic sign.

2. Exemptions. Signs exempted from the prohibition in paragraph 1 are:
(a) Signs which are erected for the safety of motorists and pedestrians in connection with hazardous activities being conducted on the property, easement or right-of-way or on adjacent private property.
(b) Official signs and signs required by law.
(c) House numbers painted on curbs.
(d) Signs carried by natural persons.

4. Removal. Any sign found erected contrary to the provisions of this Section shall be removed by the City public works department, after five days' written notice of removal shall be given. The removed signs must be stored for 30 days. During that period, the sign will be

made available to the owner and will be returned upon payment of the cost incurred in the removal and storage.

SECTION 10. Exempted Signs.

Except to the extent they are subject to special standards, the following types of signs and displays, whether on-premises or off-premises, are not subject to the provisions of this chapter and need not be included in any aggregate area computations:

1. Official traffic-control or regulatory signs, signals or devices, street-name signs or other signs required by law;
2. Changes in copy or advertising display on an existing sign which do not alter the structure, size or configuration of the sign.
3. Holiday decorations;
4. Safety or caution signs, legal notices, public utility signs;
5. Memorial tablets, plaques or markers of bronze, stone or concrete;
6. "Open", "Closed", "No Trespassing", "Warning" and similar signs not exceeding 2 square feet;
7. Address numbers or plates and residential nameplates;
8. Civic displays;
9. Flags, emblems or insignia of any nation, state or political subdivision, provided that the individual surface area is not greater than 60 square feet, and that the supporting structures are not greater than the larger of 25 feet high or 10 feet more than the permitted height for a freestanding sign, whichever is greater. Such signs not exempted are counted and regulated in accordance with this chapter.
10. Indoor posters ;
11. Architectural graphics;
12. Signs which are located within a structure and not visible from a public street, sidewalk or alley or other public area;
13. Directional signs ;
14. Stationary lights which illuminate a building or adjacent grounds and do not directly illuminate another sign; lights which outline building features and are not part of the integrated background or outline of a sign;
15. For sale signs on private property;

16. Signs constructed by public agency on public land;
17. Signs that are permitted for home occupations provided that a Home Occupation Permit has been obtained; such signs will be an unlighted name plate mounted on the building, not exceeding 2 square feet in area announcing name and home occupation.

SECTION 11. Prohibited Signs.

The following types of signs and displays are prohibited:

1. Freestanding signs in any residential, neighborhood shopping, downtown commercial core districts, or within any portion of public right of way, including street, roadway, parkway, sidewalk or alley (except with a use permit);
2. Roof signs;
3. Signs which constitute a hazard to traffic or pedestrians;
4. Signs located within any right-of-way of stream or drainage channel;
5. Mobile signs or portable signs unless carried by a person or by a motor vehicle as provided in Section 12
6. Three dimensional figures of humans or animals;
7. Signs which produce odor, sound, smoke, flame or other emissions;
- a. Signs which imitate or simulate official signs, or which use yellow or red blinking or intermittent lights resembling danger or warning signals;
9. Strobe lights or individual light bulbs exceeding 60 watts, if rays of light project directly from the source into residences or streets, or any moving beam of light;
10. Wind signs, other than those exempted;
11. Moving signs.
12. Electrically animated and flashing signs and electronic variable message signs,
13. Inflatable signs.

SECTION 12. Special standards by type of sign.

Mobile and Portable Signs

1. Mobile and portable signs, whether on-premises or off-premises, are permitted under the following conditions:

(a) The sign must be painted or otherwise directly attached flat against the exterior surface of the body of the vehicle or trailer or, if on a cargo-type body, the sign must be attached flat against the stake racks or other standard vehicle accessories used to confine cargo loads on the bed of the vehicle or trailer;

(b) The vehicle or trailer must be currently licensed and registered by the California Department of Motor Vehicles and must be legally operable and capable of being operated on the public roads;

(c) The vehicle or trailer is required for and is used to transport people or goods in connection with the business or other activity or interest being advertised; and

(d) The sign may not be illuminated and may not contain letters or symbols which are manually replaceable in order that the copy can be easily changed from time to time.

2. Directory Signs. Directory signs shall be permitted at major entrances to residential, commercial, institutional, industrial or office complexes to identify occupants, addresses or building numbers for the convenience of visitors and to facilitate emergency services. Directory signs shall not exceed 6 feet in height and shall not exceed a maximum of 24 square feet on any side. No more than 3 square feet shall be devoted to any single occupant. Directory signs shall not be included in allowable sign-area limit computations or when calculating the number of signs on a site. A permit pursuant to §13 of this Chapter is required.

3. Directional Signs. Directional signs on either face of such signs shall not exceed 4 square feet in size and shall be limited to a maximum of 2 signs for each institution, community service organization or church. Directional signs shall not be included in allowable sign area computations or when calculating the number of signs on a site. A permit pursuant to §13 of this Chapter is required.

4. Area Identification Signs. Area identification signs shall be permitted at major entrances to neighborhoods, subdivisions, residential complexes, and office or industrial complexes. Area identification signs shall not exceed 6 feet in height, or 128 square feet in area and shall not be included in allowable sign-area computations or when calculating the number of signs on the site. A permit pursuant to §13 of this Chapter is required.

5. Shopping Center Identification Signs. Shopping center identification signs shall be permitted for each shopping center. Shopping center identification signs shall be limited to one per shopping center and shall not exceed 35 feet in height and shall be a maximum of 300 square feet for all readable surfaces if in a C-1 zone

or 600 square feet in a C-S or higher zone. 100 square feet of the total sign area may be used for individual business identification signs uniform in size, shape, and lettering. A shopping center identification sign shall not be included in allowable sign area computations or when calculating the number of signs on the site. A permit pursuant to §13 of this Chapter is required.

6. Temporary signs shall be permitted under the following conditions :

- (a) The sign area may not be more than 128 square feet;
- (b) The height of the sign may not be more than 8 feet;
- (c) The aggregate sign area of all temporary signs on the premises may not be more than 128 square feet
- (d) Sign may not be in place more than 60 days;
- (e) If the sign message refers directly (certain date) or indirectly (i.e., a picture of a candidate) to a date certain, then said sign must be removed 10 days after that date certain.

(f) The sign must contain the name and address of a person or entity to contact, in the event the sign remained after the time allowed for in this chapter.

(g) The sign, if it is a commercial sign, complies with the requirements of subsection 7 through 9. (h) The location is at a distance not less than 10 feet from any public right of way, unless a building is so located on the premises as to preclude erecting the sign anywhere on the premises, in which case the sign may be attached to or mounted against the building;

(i) The sign shall not be placed on any public or utility property in violation of Section 9 of this chapter.

7. Temporary project sales signs. Notwithstanding the area and height limitations of subsection 6, project sales signs shall be allowed during the period when a developer or builder is actively engaged in the sale of lots or houses, or the sale or lease of space in a commercial, industrial or office development, provided they are maintained in good condition. One sign is allowed for each of no more than 2 major public entrances to the project area. Individual signs may not exceed 64 square feet or 8 feet in height.

8. Temporary real estate signs. One sign conforming to the height and area limitations in subsection 6 is allowed on residential property and on any property less than one acre in size. On commercial, industrial or office properties over one acre, one sign not to exceed 32 square feet in size

9. Monument signs or any sign with a base/frame or supporting structure:

The size of sign structures is limited to a maximum of 60 percent of the sign area.

SECTION 13. Permits and enforcement.

1. Permit required. Except as otherwise provided in this chapter, it is unlawful for any person to erect, enlarge, alter (except for normal maintenance or repair and changes in advertising copy or relocate within the city), any sign without first having obtained a sign permit and a building permit for the construction of a sign from the Community Development Director, and paying the permit fees.

2. Application for permit. Application for a sign or building permit for the construction of a sign, shall be made on forms provided by the city and shall include, or be accomplished by, the following:

- (a) Name, address, telephone number of the property owner;
- (b) Name, address, telephone number and signature of the applicant
- (c) Name, address, telephone number and license number of the licensed contractor, if sign is to be erected by same;
- (d) A plot plan showing the boundaries of the parcel on which the sign is to be located, as well as the location of the sign and all structures on the site, including data showing building and property frontages. Parking, landscaping and other site features shall also be indicated;
- (e) Two copies of drawings of the proposed sign(s) showing:
 - (1) the position of the sign in relation to adjacent structures or buildings;
 - (2) the design, dimensions, mounting height, materials of construction and structural details;
 - (3) Drawings or pictures of all existing on-premises or off-premises signs on the site, showing their sizes, locations and the total area of all existing signs;
 - (4) Any other information deemed necessary by the Community Development Director.

3

3. Structural engineering. The Community Development Director may require structural engineering or such other information necessary to preserve the safety and welfare of the general public or to insure compliance with this chapter or other provision of law.

4. Business license. Owners or applicants who are in the business of constructing advertising structures or leasing such structures for advertising purposes shall provide evidence that they have a valid business license from the finance department of the city.

5. Issuance of Permits. When all requirements of this chapter have been satisfied and all fees paid, a sign or building permit shall be issued by the Community Development Director.

6. Permit Fees. Fees for sign or building permits shall be as set by resolution of the City Council from time to time.

7. Validity of permit. The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this chapter or of any other law or ordinance.

8. Stop work order. Whenever any advertising display or structure is being erected or maintained contrary to the provisions of this chapter, the Community Development Director may order the work stopped by serving the permittee or owner of the property or by posting a notice on the work being done. The owner or person responsible for the performance of such work shall promptly cease performing any work on the advertising display or structure until the Community Development Director gives him/her authority to proceed.

9. Suspension and revocation. Any sign or building permit issued in error, or in reliance on a falsified application, may be revoked by the Community Development Director. Any sign erected or partially erected under a permit issued pursuant to a falsified application may be ordered removed at the owner's expense.

II. ADDITIONAL REQUIREMENTS

SECTION 14. General standards, All Signs.

1. Regulated signs. All signs erected or located in the city which are not exempted by Section 10, are subject to the provisions of this chapter as to their location, size, height, type and function. Types of signs which are not specifically mentioned are permitted subject to the regulations contained in this chapter.

2. Sign area computation -- Individual Signs. Except for signs covered by Sections _____ (regulated signs) through 13, the allowable sign area shall apply to all readable surfaces of the sign. No one side of any sign may contain more than 50 percent of the total sign area allowed. Where an on-premises sign consists of individual letters, numbers or symbols, painted on or attached directly to a building which are without an integrated background and are not enclosed in a frame or cabinet, the area of the display shall be the average height of the display, times the average width. If such a display consists of more than one line or component, the area of each line or component may be calculated separately. Where a display is enclosed in a frame or cabinet, or has an integrated background, the entire area within the frame, cabinet, or background must be included.

3. Allowable sign area.

(a) Where the allowable sign area is a function of business frontage, no more than 2 business frontages may be counted in calculating the allowable area for any building occupant.

(b) The sign area of all sides of all signs on a lot shall be counted and shall not exceed the maximum calculated allowable sign area. In no case shall the total sign area on a lot exceed the maximum allowance established for the zone in which the lot is located as provided in Section 15.

(c) Where both on-premises and off-premises signs are located on the same site, the allowable on-premises sign area shall be reduced by the amount of off-premises sign area, on the same premises.

(d) The total sign area on any premises shall not be transferable to any other property or parcel so as to allow a parcel or property owner to accumulate sign area credits.

(e) Any portion of signage on a lot which exceeds the maximum allowed becomes non-conforming and is subject to provisions in Section 17.

4. Number of signs. The number of freestanding signs located on any business frontage shall not exceed 1 sign, freestanding for any single business or shopping center in the appropriate zones. Any advertising display contained within a single frame, cabinet or integrated background shall count as 1 sign. If a display is not so contained, a single message or business name shall be counted as 1 sign. A business name combined with a brief slogan may be counted as 1 sign if the elements are visually integrated. Multiple signs on a single freestanding structure, where permitted, are allowed if the other requirements of subsection _____ and this Subsection are satisfied provided, that all signs supported by a single structure are visually compatible with one another.

5. Maintenance, repair and appearance. All signs shall be maintained in good repair and shall be neat in appearance. Any sign which is determined by the Community Development Director, to be unsafe or unsightly because of bent, broken or missing parts or poor maintenance generally, may be declared a public nuisance.

6. Location of signs. Signs located on private property shall not extend across property lines into adjacent property. Signs may be located within, or project into, setbacks, except that no sign may overhang more than 1 foot over a public right-of-way or be located in a manner that would create a hazard for traffic or pedestrians.

The supporting structure of a freestanding must be located at least 10 feet from the back of the curb in residential zones and at least 2 feet in commercial and industrial zones.

7. Wall signs. Wall signs may not extend above or beyond the wall or surface to which they are attached and may not project more than 1 foot from the wall.

a. Projecting signs are allowed subject to these conditions:

- (a) The sign may not extend above the wall or other surface to which it is attached; and
- (b) The sign may not be attached to or located on/or above a roof.

SECTION 15. Special standards by zone.
See Chart.

SECTION 16. Removal or Restoration of Signs.

		R-1	R-2	R-LD	R-GA	R-MD	R-HD	R-CP	C-1	C-S	C-2	C-M	M-1	M-2	P-D	F-P	U-R	PUB
A	Are off-premise signs allowed?	NO										YES			NO			
B	Maximum height of freestanding signs	20 FEET						35 FEET		35 FEET (75' IN FIA)				*	20 FEET			
	Maximum number of freestanding signs	-				ONE						*	-	ONE				
D	Maximum size of any one sign	-				200	300	480				*	-	200				
	Ratio of allowable total sign area	-				.5: 1	2: 1	3: 1				*	-	.5: 1				
F	Maximum allowable total sign area	48 SQUARE FEET				200	300	480				*	-	200				
	Can signs be indirectly lit?	YES						NO						YES	NO	YES		
	Can signs be interiorly lit?	YES														NO	YES	
I	Are animated signs allowed?	NO																
J	Are projecting signs allowed?	NO																
K	Maximum number of readable surfaces	TWO																
L	Setback from curb	10 FEET						2 FEET						*	10 FEET			

*Varies depending on underlying zoning or use

- Notes: 1. The ratio of allowable sign area depends on lineal building or business frontage
2. Businesses with two street frontages take 75 percent of the total when calculating the allowable sign area
3. No one sign may have more than 50 percent of the allowable sign area on one side.

The Community Development Director may issue a written Remove or Restore Notice to the owner of an on-premises sign and/or sign structure, requiring the removal or restoration of the sign and/or sign structure within 30 days of the Notice, if any of the following conditions is determined to exist:

1) Any sign and/or sign structure erected without first complying with all ordinances and regulations in effect at the time of its construction and erection or use.

2) Any sign and/or sign structure which was lawfully erected, but whose use has ceased, or the sign structure has been abandoned by its owner, for a period of 90 days.

3) Any sign and/or sign structure which has been more than 50 percent destroyed, and the destruction is other than facial copy replacement, and the sign and/or sign structure cannot be repaired within 30 days of the date of its destruction.

4) Any non-conforming sign and/or sign structure whose owner, outside of a change of copy, requests permission to remodel and remodels that sign and/or sign structure, or expand or enlarge the building or land use upon which the sign and/or sign structure is located, and the sign and/or sign structure is affected by the construction, enlargement or remodeling, or the cost of construction, enlargement or remodeling of the sign and/or sign structure exceeds 50 percent of the cost of reconstruction of the building.

5) Any sign and/or sign structure whose owner seeks relocation thereof and relocates the sign and/or sign structure.

6) Any sign and/or sign structure for which there has been an agreement between the sign and/or sign structure's owner and the city, for its removal as of any given date.

7) Any sign and/or sign structure which is temporary.

8) Any sign and/or sign structure which is or may become a danger to the public or is unsafe.

9) Any sign and/or sign structure which constitutes a traffic hazard not created by relocation of streets or highways or by acts of the city.

Said Remove or Restore Notice shall be issued by certified mail. If the sign and/or sign structure is not removed or restored within the 30-day period, the Community Development Director may cause the removal of the sign and/or sign structure, and the costs thereof may be charged to the legal owner of the sign and/or sign structure. The Community Development Director may allow an abandoned sign and/or sign structure to remain in place, provided that the sign and/or sign structure is maintained in good condition, and that there is a reasonable possibility that the sign can be restored to use within a 1-year period.

SECTION 17. Continued use of nonconforming signs.

1. Continuance of a nonconforming use. Any advertising display which becomes nonconforming as the result of the adoption of this chapter is subject to the conditions hereinafter stated:

(a) Except as otherwise provided in paragraph (b), a nonconforming sign damaged by wind or other natural causes to an extent greater than 50 percent of its replacement cost, as determined by a member of the American Institute of Real Estate Appraisers selected by the Community Development Director, shall not be reestablished. If the Community Development Director determines that an appraisal is necessary to satisfy the requirements of this Section, he/she shall notify the owner of the sign who shall give him/her written authorization to hire an appraiser and acknowledge owner's responsibility to pay all fees incurred as a result thereof. No permit for reconstruction of the damaged sign shall be issued until the Community Development Director is presented with satisfactory evidence that the appraisal fees have been paid.

(b) A nonconforming display which is damaged or destroyed as a result of vandalism or other malicious act may be restored or rebuilt. This Section does not permit the display or supports to be constructed of a different material.

(c) A nonconforming sign which is determined to be abandoned shall be removed.

(d) A nonconforming sign must be removed if the parcel on which the sign is located is subjected to any of the following changes:

- (1) Approval of a parcel map;
- (2) Approval of a tentative subdivision map;
- (3) Approval of a major project review;
- (4) Approval of a resolution of intent to change land use district.

2. Cessation of right to maintain abandoned sign. The right of a person to maintain an abandoned, nonconforming sign shall terminate following his/her receipt of notification that the Community Development Director has deemed the sign abandoned.

a) Responsibility for removal. Responsibility for removal of an abandoned, nonconforming sign rests with the owner of the sign or the owner of the property upon which the sign is constructed.

b) Appeals. Appeals from the decision of the Community Development Director relative to abandoned signs or advertising structures may be made to the Planning Commission as provided in Section 7 - Appeals Procedure.

3. Amortization of nonconforming off-premise signs.

(a) The right to maintain and continue the use of a non-conforming off-premise sign shall cease 7 years from the date on which the sign became nonconforming. The Community Development Director shall give notice at least 3 years before ordering a nonconforming sign removed or brought into conformance under the provisions of this subsection, and may do so during the 7-year amortization period.

Notice shall be given by certified mail to the owner of the property on which the sign is located and to the owner of the sign, if not the same as the property owner. The owner of the sign shall be responsible for removing the sign or bringing it into conformance with the requirements of this chapter.

(b) Order to remove. Upon expiration of the 7-year amortization period provided in this Section, the Community Development Director shall order the nonconforming sign to be removed.

SECTION 18. Abandoned signs.

1. Removal of abandoned signs. Any sign and/or sign structure which has been abandoned for a period of 90 days shall be removed or restored to use within 30 days after a notice to restore or replace issued to the owner of the sign and/or sign structure. Notice shall be given by the Community Development Director, using certified mail. The Community Development Director may allow an abandoned sign and/or sign structure to remain in place, provided that the sign or sign structure is maintained in good condition, and that there is a reasonable possibility that the sign can be restored to use within a 1-year period.

2. Criteria for establishing abandonment. A sign or sign structure shall be considered abandoned when any of the following occurs:

- (a) Any copy thereon is out of date;
- (b) Any business advertised thereon is no longer located at the advertised premises;
- (c) Any product or service advertised thereon is no longer offered on the advertised premises;
- (d) The structure no longer supports a sign or the sign no longer contains an advertising display;
- (e) A sign, structure or advertising display is visibly damaged or partially missing.
- (f) The event which is being advertised has occurred.

SECTION 19. Violations.

1. Procedure for violations. Any advertising display or structure erected or maintained, or any use of property contrary to the provisions of this chapter, is unlawful and a public nuisance. The following procedure applies to enforcement of the provisions of this chapter:

- (a) Notice of Violation. In the event of a violation of this chapter, the Community Development Director shall deliver to the person or persons in violation of this chapter a "Notice of Violation" ordering the persons to comply with the provisions of this chapter within 10 days of receipt of the notice.
- (b) Noncompliance; Citation. Upon failure of the persons in violation to comply, the Community Development Director may issue to the persons in violation, a citation to appear before the Lodi Municipal Court and may refer the notice of the violation to the city attorney for commencement of an action or actions for the abatement, removal and enjoinder of such violation as a public

nuisance and the institution of a criminal action in the manner provided by law.

2. Remedies. All remedies provided for in this chapter are cumulative and not exclusive. The conviction and punishment of any person under this chapter does not relieve such person from the responsibilities of correcting conditions or removing prohibited sign displays and structures which are in violation of this chapter.

3. Penalties. Any person violating any of the provisions of this chapter or any applicable provisions of the Uniform Building Code is guilty of a separate offense for each day or a portion thereof during which a violation of any of the provisions of this chapter is committed, continued or permitted, and upon conviction for any such violation shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 6 months, or by both fine and imprisonment.

SECTION 20. All ordinances or parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 21. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this day of

Attest:

EVELYN M. OLSON
MAYOR

ALICE M. REIMCHE
City Clerk

State of California
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. was introduced at a regular meeting of the City Council of the City of Lodi held and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held by the following vote:

Ayes: Council Members -

Noes : Council Members -

Absant: Council Members -

Abstain: Council Members -

notions of judicial efficiency come into play as well. A complaining party may be successful in vindicating his rights in the administrative process. If he is required to pursue his administrative remedies, the courts may never have to intervene. And notions of administrative autonomy require that the agency be given a chance to discover and correct its own errors. Finally, it is possible that frequent and deliberate flouting of administrative processes could weaken the effectiveness of an agency by encouraging people to ignore its procedures.

395 U.S. at 194, 195, 89 S.Ct. at 1002-04.

In this case, it is possible that pursuit of all available administrative remedies may have resolved the dispute or at least provided a full factual record upon which a court could review the issues. See *Craycraft v. Ferrall*, 408 F.2d 537 (9th Cir.1969) *vacated on other grounds*, 397 U.S. 335, 90 S.Ct. 1152, 25 L.Ed.2d 351 (1970). Had the IBLA been confronted with a direct appeal from the December 18 decision, it would have been able to consider Nequoia's arguments, perhaps resolve the controversy and at least would have developed the record with regard to the extent to which Interior had searched its files for material complying with the filing requirements imposed by the Mining in the Parks Act.¹²

12. There is a factual dispute as to exactly what information regarding Nequoia's claims existed within the files of the NPS prior to Nequoia's filing on September 28, 1977 and as to what information was reviewed by the DLM in concluding that Nequoia's filing was insufficient and that its claims were therefore abandoned and void.

Plaintiffs allege that the information allegedly absent from the September 28 filing, e.g., an accurate map identifying each claim, was already in the files of the NPS and that Interior had a duty to consider this additional information when passing on the validity of Nequoia's claims. Had we reached the merits of the December 18 decision, the questions of exactly what information was in the agency files, when it was filed and whether the NPS was aware of such information may well have been material to our analysis. Because of Nequoia's failure to appeal, however, the factual record regarding the information in the files was never developed.

[7,8] Application of the exhaustion theory to this case is further warranted by a concern for finality. By regulation, the Secretary of Interior has provided that appeals to the IBLA be commenced within thirty days of the date of the decision from which appeal is sought. See 43 C.F.R. 4.41(a). One of the reasons behind such a time limitation is necessarily a concern for finality. Parties to administrative proceedings have an interest in knowing when decisions are final and on which decision their reliance can be placed. Allowing Nequoia to file a motion to vacate almost nine months after the December 18 decision and allowing it to question the validity of that decision in this court almost two years after the decision and eleven months after the IBLA's dismissal of the appeal is certainly at odds with the need for finality.¹³ We therefore hold that the plaintiffs' failure to timely appeal the December 18 decision to the IBLA precludes our review of the merits of that decision.

IV.

[9] The final issue presented by this case is whether plaintiffs are entitled to a trial to determine compensation for the taking of their property pursuant to 16 U.S.C. § 1910.¹⁴ Defendants argue that plaintiffs have failed to allege facts from which a

13. While there is no statutory time limit for judicial review of a decision of the IBLA, judicial review of such decisions is still subject to general principles of estoppel and the rules of pleading imposed by the Federal Rules of Civil Procedure. *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.1981).

14. 16 U.S.C. § 1910 provides:

The holder of any patented or unpatented mining claim subject to this Act who believes he has suffered a loss by operation of this Act, or by orders or regulations issued pursuant thereto, may bring an action in a United States district court to recover just compensation, which shall be awarded if the court finds that such loss constitutes a taking of property compensable under the constitution. The court shall expedite its consideration of any claim brought pursuant to this section.

Cite as 626 F.Supp. 837 (E.D.Mo. 1985)

taking of their property could be found. We find defendants' argument well taken. granted and this action is dismissed with prejudice.

In *United States v. Locke*, — U.S. —, 105 S.Ct. 1785, 85 L.Ed.2d 64 (1985), the Supreme Court confronted similar arguments made by claimants whose mining claims were extinguished under the Federal Land Policy and Management Act for failure to make a timely annual filing. In holding that no taking which required compensation had occurred, the Court noted that it had never required Congress to compensate an owner for the consequences of a mining claimant's failure to file a timely annual filing. It then went on to reason that:

[a]ppellees failed to inform themselves of the proper filing deadline and failed to file in timely fashion the documents required by federal law. Their property loss was one appellees could have avoided with minimal burden; it was their failure to file on time—not the action of Congress—that caused the property right to be extinguished. Regulation of property rights does not "take" private property when an individual's reasonable, investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions the legislature has imposed.

105 S.Ct. at 1799, 85 L.Ed.2d 64.

We find that *Locke* is controlling in this case. Like the appellees in *Locke*, the plaintiffs here lost their claims because of their own failure to comply with reasonable regulations imposed by Congress. Congress did not "take" plaintiffs' mining claims. Rather, plaintiffs gave up those claims when they waited until the last possible day for filing, when they filed insufficiently and also when they failed to appeal their loss through prescribed administrative channels. We therefore hold that plaintiffs' claim under 16 U.S.C. § 1910 for the taking of their property is dismissed.

Accordingly,

IT IS HEREBY ORDERED that the defendants' motion for summary judgment is



NATIONAL ADVERTISING
COMPANY, Plaintiff,

v.
CITY OF BRIDGETON, Defendant.

No. 84-2089(C3).

United States District Court,
E.D. Missouri, E.D.

Dec. 30, 1985.

Commercial billboard company brought action challenging city ordinance prohibiting off-site commercial billboards. The District Court, Hingate, J., held that the ordinance, which prohibited commercial billboards based on aesthetic grounds, and which permitted political signs and on-site signs, was valid under the First Amendment.

Judgment for defendant.

Constitutional Law — 290.3
Zoning and Planning — 2981

City's ban on off-site commercial billboards throughout the community based on aesthetic grounds was valid under First Amendment where exceptions permitted adequate opportunity for diverse political expression and allowed owner of premises to place signs thereon denoting lawful business or profession pursued thereon. U.S. C.A. Const. Amend. 1; V.A.M.S. Const. Art. 3, § 48; Art. 6, §§ 19, 19a; V.A.M.S. § 226-500 et seq.; 23 U.S.C.A. § 131(a).

Patrick C. Dowd, Coburn, Croft & Putzell, St. Louis, Mo., for plaintiff.

William A. Richter and W. Mark Rasmussen, Peper, Martin, Jensen, Maichel & Heluge, St. Louis, Mo., for defendant.

THE REPRODUCTION OF THIS
DOCUMENT CANNOT BE
IMPROVED DUE TO THE
CONDITION OF THE ORIGINAL

MEMORANDUM OPINION

HUNGATE, District Judge.

"I love a billboard. I always will
Because a billboard gives me such a
thrill.

When I was only a little child
A circus billboard drove me wild."

The Billboard March, by John N. Kiohr.

Apparently, billboards have likewise attracted the attention of the Bridgeton City Council. This suit follows defendant's denial, pursuant to its ordinance prohibition against "billboards," of plaintiff's applications for building permits to erect outdoor advertising structures on leased property.

The relevant Bridgeton ordinances allow some exceptions, perhaps in the interest of due process rights of land owners to erect signs on their own property relating to the business or profession carried on there. They further permit, perhaps in the interest of the first amendment, for temporary periods relating to elections, signs denoting issues or candidates supported or opposed; no bias or preference is dictated by the ordinance.

Can a city, in the interest of aesthetics, restrict off-site signs erected for profit? Or signs calling attention to a business or profession not conducted or service or product not available on the premises on which the sign is located?

The Court's consideration of the difficult questions presented here was aided by outstanding presentations made by counsel on both sides.

Findings of Fact

1. Plaintiff is a corporation organized and existing under the laws of the State of Delaware and qualified to transact business as a foreign corporation in the State of Missouri.

2. Plaintiff is engaged in the business of outdoor advertising throughout the United States, including the metropolitan St. Louis area.

3. Defendant is a "Constitutional" Charter City" under Article 6, Section 19 of the

Constitution of the State of Missouri of 1945, as amended.

4. The powers of the defendant are derived from Article 6, Section 19(a) of the Constitution of the State of Missouri of 1945, as amended.

5. As a part of its outdoor advertising business, plaintiff (a) leases real estate; (b) erects and maintains outdoor advertising signs on the real estate it leases; and (c) leases space on its signs to persons or entities to display advertising on the signs. The advertising messages displayed on plaintiff's signs include non-commercial and commercial speech. The speech advertised is for lawful activities and is not misleading.

6. The non-commercial speech advertised on plaintiff's signs includes (a) services performed by charitable and civic organizations; (b) fund raising campaigns for charitable and civic organizations; (c) campaigns to fight crime, drug addiction, and drunken driving; (d) political messages by candidates for public offices; (e) messages on political issues; and (f) messages by religious organizations.

7. The commercial speech advertised on plaintiff's signs includes advertisements by (a) hotels and motels; (b) restaurants; (c) motorist services; (d) tourist attractions; (e) businesses selling products or services; (f) radio and television stations; and (g) financial institutions.

8. During 1984, plaintiff leased three parcels of real estate within the municipal boundaries of the City of Bridgeton and in areas zoned by the defendant for commercial or industrial purposes. The leased real estate is located within 600 feet of the nearest edge of the right-of-way of two interstate highways which are located within the municipal boundaries of the defendant, are a part of the interstate highway system in the State of Missouri, and are interstate highways for the purposes of Mo.Rev.Stat. § 226.500, et seq. (1978).

9. Plaintiff seeks to erect a 14' by 45' monopole outdoor advertising sign on each of the leased parcels of real estate for use

Cite as 626 F.Supp. 837 (E.D.Mo. 1985)

in plaintiff's outdoor advertising business. In June of 1984 plaintiff applied to defendant for permits to build an outdoor advertising structure on each of the leased properties.

10. At all times material to this action, Article VI of Chapter 5 of defendant's Municipal Code¹ and Ordinance No. 84-85 enacted by defendant on August 15, 1984,² prohibited off-site commercial and non-commercial advertising. Due to these prohibitions, the other provisions of old Article VI and of Ordinance No. 84-84 were not intended to apply to off-site outdoor advertising signs.

11. The provisions in old Article VI of Chapter 5 of defendant's Municipal Code and Ordinance No. 84-84 of defendant's Municipal Code which prohibit off-site outdoor advertising signs were enacted by defendant only for the purpose of maintaining and improving aesthetics within defendant's municipal boundaries. Aesthetics is a governmental interest which the defendant can advance if done properly.

12. Pursuant to defendant's ordinances, which declare unlawful signs advertising products, articles, or services not produced or available on the property on which the

sign is located, defendant denied each of plaintiff's building permit applications. Plaintiff was unable to build outdoor advertising signs on the three premises it leased, and has not been able to realize the profits it would have realized had the signs been erected and maintained.

13. But for old Article VI of Chapter 5 of defendant's Municipal Code and Ordinance No. 84-84 of defendant's Municipal Code, plaintiff would be entitled to a sign permit and could erect and maintain the type of sign plaintiff desires to erect on each of the parcels of real estate leased by the plaintiff.

Conclusions of Law

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391(b). The Court declines to exercise jurisdiction over the pendent state law preemption claim and therefore does not determine that claim. *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

2. Do the Bridgeton ordinances at issue here constitute a prior restraint on free

the premises upon which the graphic is located.

Section 5-132(a) of Ordinance No. 84-84. See Exhibit B attached hereto and incorporated herein by reference for a complete copy of the new ordinance. The present ordinance allows the following:

On the property which it occupies, each activity is entitled to display, on each street and parking lot on which it fronts, street graphics containing a total of items of information up to the maximum designated in Section 5-128. However, if the name of the activity contains more than the maximum number of items of information permitted, such name may be displayed once on each frontage provided no other graphic for that activity is displayed on the building or premises.

Section 5-127(a). The ordinance explicitly exempts from its regulations "[p]olitical signs not over 8 square feet in area that are placed in a Residential District only and that are removed within 10 working days after the date of the election to which they pertain." Section 5-131(c), among other listed signs.

2. On August 15, 1984, defendant amended its ordinance to prohibit explicitly, with specified exceptions,

[g]raphics advertising a service not provided or an article or product not manufactured, assembled, processed, prepared or sold upon

THE REPRODUCTION OF THIS
DOCUMENT CANNOT BE
IMPROVED DUE TO THE
CONDITION OF THE ORIGINAL

speech? Yes, as to advertising a business or profession provided or a product not available on the premises where the sign is located.

Is this the sort of prior restraint on free speech forbidden by the first amendment to the United States Constitution? No.

I think that I shall never see

A billboard lovely as a tree

Indeed, unless the billboards fall

I'll never see a tree at all.

"Song of the Open Road," *The Ogden Nash Pocket Book*, 6 (1944).

Consider, what other avenues of expression are available to plaintiff in this case? The Official Manual of the State of Missouri for the years 1983 and 1984 indicates the St. Louis metropolitan area has more than fifteen newspapers, over twenty radio stations, and six television stations. This is not counting the rights to distribute handbills, operate soundtrucks, or conduct sky-writing, all of which occur in the area.

We are not talking about a penniless person carrying a placard, seeking "Justice for Leonard Peltier," see *United States v. Peltier*, 731 F.2d 550 (8th Cir.1984) (per curiam); *United States v. Peltier*, 585 F.2d 314 (8th Cir.1978), cert. denied, 440 U.S. 945, 99 S.Ct. 1422, 59 L.Ed.2d 634 (1979), or decrying oppressive tax laws. Here we are considering those who can afford the expense of a billboard. So, even if the ordinance here were invalidated or repealed, a pauper could not employ this form of free speech.

3. To determine whether the governmental restrictions here are valid restrictions on commercial speech, the Court must decide whether the commercial speech "concerns lawful activity and is not misleading" and then whether the restrictions seek

to implement a substantial governmental interest, ... directly advance that interest and ... reach no farther than necessary to accomplish the given objective.

Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 507, 101 S.Ct. 2582, 2592, 69 L.Ed.2d 800 (1981), citing *Central Hudson Gas & Electric Corp. v. Public Service*

Comm'n, 447 U.S. 557, 563-66, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). Here, it is undisputed that the speech advertised by plaintiff is lawful and is not misleading, and that the ordinances restrict the speech. Thus, the Court must consider the restrictions' validity.

4. Do the ordinances implement a substantial governmental interest? A substantial governmental interest in aesthetics has been recognized. See *Metromedia, Inc., supra*, 453 U.S. at 507-08, 101 S.Ct. at 2592-93; *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 856-77, 101 S.Ct. 2118, 2139, 80 L.Ed.2d 772, 77 (1984).

Concern about the proper balance between commercial and aesthetic values has long disturbed the public conscience.

I have ridden superhighways

and believed the billboard's promises

• • • • •

{O}n freeways fifty lanes wide on a concrete continent spaced with bland billboards illustrating imbecile illusions of happiness

Lawrence Ferlinghetti, *A Conny Island of the Mind*, 64, 9 (1959).

In the Highway Beautification Act of 1966, the federal government recognized the legitimacy of aesthetic interest in the regulation of outdoor signs at the national level:

The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

23 U.S.C. § 131(a) (emphasis added).

The State of Missouri, in its Constitution recognizes the legitimacy of aesthetic interest in the regulation of outdoor signs at state level:

The general assembly may enact laws and make appropriations to preserve and

perpetuate memorials of the history of the state by parks, buildings, monuments, statues, paintings, documents of historical value or by other means, and to preserve places of historic or archaeological interest or scenic beauty, and for such purposes private property or the use thereof may be acquired by gift, purchase, or eminent domain or be subjected to reasonable regulation or control.

Mo. Const. Art. III, § 48 (emphasis added).

The Missouri Constitution authorizes the state legislature to preserve scenic beauty. Missouri courts have long recognized and upheld the reasonable regulation of signs, including compensation and amortization to eliminate nonconforming signs.

Chapter 5, § 5.18, §§ 1 and 3, at pages 5-24 and 5-25, *Missouri Local Government Law*, published by the Missouri Bar. See also Mo.Rev.Stat. § 226.500, et seq. (1978).

If beauty is in the eye of the beholder, who shall be the beauty operator? Is it the elected legislative body of local residents whose mandate must be regularly renewed by the electorate; —or an appointed (and sometimes non-resident) tribunal whose eyes may never gaze upon the economic blight, visual pollution, and aesthetic issues to which the ordinance is addressed.

"The advertised billboard starts up
 humming a tune from Naughty Marietta
 We have just

Temple Avenue	Levee Palm Hotel
Shell Motel	Private Pool Studios
HEAVEN	Funny Farm
Paradise Road Blue Chip Stamp	GOLF
LaCafe	THE END
Korean Temple	Towaway Zone
Golf	Silver Slipper
Progressive Jacksons	Nebraska Veterans Bureau
Play Sings & Free Drinks	Lux Vegas Boulevard
Boonies Casino	Check Cashing Service
FOLIES BURGERIE	"Never Before"
Hunt Breakfast	Sage & Sund
	HOOPER DAM
	"Old Fashioned Hospitality"
	Frontier Hotel
	LAS VEGAS HILTON
	THE DINERS
	STARPOST
	Westward Ho
	SHOWBOAT
	FLAMINGO
	DESERT INN
	PYRAMIDS
	CASARS PALACE

Orange Julius
 Our Marriage Chapel
 Little Church of the West
 Thirty Dollar Weddings
 On Home National or Refund
 Jesus Christ Superstar gets off

Lawrence Ferlinghetti, "Las Vegas Tab," *Open Eye, Open Heart*, 98-99 (1961).

"It is hostile to a democratic system to involve the judiciary in the politics of the people. . . . Courts ought not to enter this political thicket," wrote Justice Felix Frankfurter in 1946. *Valentine v. Green*, 328 U.S. 549, 553-54, 556, 66 S.Ct. 1198, 1200, 1201, 50 L.Ed. 1432 (1946).

Congressional Quarterly, vol. 43, no. 39, p. 1940, Sept. 28, 1985.

Writing for the majority in *Reynolds v. Sims*, 377 U.S. 533, 562, 84 S.Ct. 1362, 1382, 12 L.Ed.2d 506 (1964), Chief Justice Warren explaining the reasoning behind one person, one vote, stated: "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests." A fortiori legislators, not billboards, represent people.

As a general principle, a city's power to enact ordinances for an aesthetic purpose is unquestioned.

Therefore, little can be gained in the area of constitutional law, and much lost in the process of democratic decisionmaking, by allowing individual judges in city after city to second-guess such legislative or administrative determinations.

Metromedia, Inc., supra, 453 U.S. at 570, 101 S.Ct. at 2595 (Robinson, J., dissenting).

If an ordinance is arbitrarily enforced in a discriminatory manner, it could of course become unconstitutional. For example, the United States Supreme Court was careful to emphasize:

The petitioner was clearly given to understand that under no circumstances would he and his group be permitted to demonstrate in Birmingham, not that a demonstration would be approved if a time and place were selected that would minimize traffic problems.

Shuttlesworth v. City of Birmingham, 394 U.S. 147, 158, 89 S.Ct. 935, 942, 22 L.Ed.2d 162 (1969).

A perfectly valid ordinance on vagrancy or drunkenness may be rendered unconstitutional if uniformly and systematically applied only to blacks or some other specific minority group. However, this should not make the ordinance unconstitutional, only its application.

"You should not roll up your pants until you get to the creek," as the late constitutional authority, Congressman Emanuel Celler, was wont to say.

"There is no evidence that the statute has been [or will be] administered otherwise than in the fair and non-discriminatory manner which the state court has construed it to require." [*Cox v. New Hampshire*, 312 U.S. 569, 577, 61 S.Ct. 762, 766, 85 L.Ed. 1049 (1941)].

[T]here [is] nothing [here] to show "that the statute has been [or will be] administered otherwise than in the ... manner" [sensitive to and balancing all community

Shuttlesworth, supra, 394 U.S. at 156, 158-59, 89 S.Ct. at 941, 942-43. Here, there is no allegation that defendant arbitrarily enforced the ordinances.

5. Defendant directly furthered the substantial governmental interest of improving and maintaining the aesthetics within defendant's boundaries by prohibiting off-site outdoor advertising. *Id.*, 453 U.S. at 511-12, 101 S.Ct. at *894-95.

6. Defendant moreover has not gone farther than necessary to regulate commercial speech by allowing such speech on site and disallowing such speech off site, *Id.*

The ordinances do not distinguish between commercial and non-commercial messages since the ordinances permit on-site advertising, subject to structural restrictions, and prohibit off-site advertising, sub-

* Editor's note—Ord. No. 72-8, adopted Feb. 2, 1972, repealed former Art. VI, §§ 5-125-5-159, pertaining to signs, derived from Ord. No. 955, adopted Oct. 18, 1968. Sections 1-34 of said

ject to the exemptions contained in the ordinances.

Therefore, the ordinances are constitutional.

It is important to have judicial decisions from which definitive principles can be clearly drawn. See *Metromedia, Inc., supra*, 453 U.S. at 569, 101 S.Ct. at 2921 (Burger, C.J., dissenting).

If affirmed, this case would hold that where exceptions permit adequate opportunity for diverse political expression, and allow the owner of the premises to place signs thereon denoting the lawful business or profession pursued thereon, then a ban on other commercial billboards throughout the community based on aesthetic grounds is valid.

To hold otherwise erodes the federal policy expressed in the Highway Beautification Act. It would dilute powers granted by the state constitution and weaken the authority of duly elected city councils to legislate in the area of aesthetics.

EXHIBIT A

ARTICLE VI. SIGNS *

Sec. 5-125. Definitions.

As used in this article the following terms shall have the respective meanings ascribed to them:

Billboards. All signs maintained by advertising agencies which advertise products of their customers or clients, and all business signs individually or privately owned which are not on the premises of the owner or place of business to which they apply; including well signs and those otherwise attached to buildings and structures, as well as those not attached to buildings and supported by uprights or braces on the ground.

Combined office building. All office buildings combined with convenience goods, stores or personal service shops.

Ord. No. 72-8, as amended by Ord. No. 72-24, § 1, adopted July 19, 1972, are included herein as a new Art. VI, §§ 5-125-5-158.

Erect. To build, construct, attach, hand, place, suspend or affix, and shall also include the painting of wall signs.

Facing or surface. Any surface of the sign upon, against or through which the message is displayed or illustrated on the sign.

Gasoline and oil service stations. Any business which dispenses or is designed to dispense, gasoline and oil for use in motor vehicles and boats.

Ground sign. Any sign erected, constructed or maintained for the purpose of indicating services, articles and products offered within the building, when such sign is supported by one or more uprights, posts or braces placed upon or affixed in the ground and not attached to any part of a building.

Incombustible material. Any material which will not ignite at or below a temperature of twelve hundred (1200) degrees Fahrenheit and will not continue to burn or glow at that temperature.

Illuminated sign. Any sign which has characters, letters, figures, designs or outline illuminated by electric lights or luminous tubes as a part of the sign proper.

Lineal footage. Shall mean that length of the property line along any street with ingress and egress.

Marquee sign. Any sign affixed to a marquee over the entrance to a building, extending and supported from the building.

Occupational signs. All industrial, commercial and mercantile signs advertising the business on its premises or any of its activities, including permanent theater signs used to advertise performances.

Other advertising structure. Any marquee, canopy, awning, street clock, time and weather information, as further defined herein.

Pole sign. Any letter, work, model, sign, device or representation used in the nature of an advertisement or announcement not attached to a building and which is supported by a single stationary pole or multiple poles.

Projection sign. Any letter, work, model, sign, device or representation used in the nature of an advertisement or announcement projecting from the building and not in the same plans as the wall.

Reader board. Any sign that has changeable or removable lettering, with the exception of marquee signs which are covered separately in this article and which is permanently fixed to the ground, building or structure.

Roof line. Shall mean the top of the walls where the roof begins.

Roof sign. Shall mean any sign painted, erected, constructed or maintained upon the roof of any building, including projecting signs attached to a parapet wall that extends above the roof line.

Signs. Every sign, billboard, ground sign, portable sign, pole sign, wall sign, roof sign, illuminated sign, projecting sign, temporary sign, marquee, awning, canopy, time and weather information, and street clock, and shall include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interest of any person when the same is placed in view of the general public.

Sign area. A total area of the space to be used for advertising purposes, including the spaces between open-type letters and figures, including the background structure, or other decoration or addition which is an integral part of the sign. Sign supports shall be excluded in determining the area of a sign. The total allowable area for a double faced sign where the two (2) faces are substantially parallel shall be the sum of the area of each face and where the two (2) faces are not substantially parallel said total allowable area shall be one-half (1/2) the sum of the area of each face divided equally between both faces.

Device. Banner, pennant, streamer, wind operated mechanism, flashing lights and any other type of fluttering or flashing instrumentality, but shall not include signs which are defined under this section.

Shopping center. An area containing four (4) or more shops, stores and other places of business permitted under the zoning ordinances, and providing off-street parking facilities in common for all the businesses and their customers.

Structural trim. The molding, battens, cappings, nailing strips, latticing and plat-forms which are attached to the sign structure.

Wall sign. Any painted sign, letter, work, model, device or representation used in the nature of an advertisement or announcement that may be affixed to the front side or rear wall of any building and in the same plane as the face of the wall.

Window sign. A painted sign, letter, work, model, symbol, logo, device or representation used in the nature of an advertisement or announcement that may be applied or affixed to the window of a structure or building. (Ord. No. 72-8, § 1, 2-2-i2)

Sec. 5-126. Compliance with construction codes.

The provisions of the building, electrical and fire prevention codes of the city shall govern the construction, alteration and maintenance of all signs, including outdoor display signs, with their permanent and auxiliary devices, so far as they do not conflict with the provisions of this article. Approval of signs under special permit must be obtained from the design and review board. (Ord. No. 72-8, § 2, 2-2-12)

Sec. 5-127. Exception to requirement for permits and fees.

It shall be unlawful for any person to erect, alter or relocate any sign or other advertising structure in this city without first obtaining a permit therefor from the building official and making payment of the fee, if any, required in section 5-130 except for those signs listed below which are exempted from the requirements for a permit and the overall size and number limitation of signs per lot or building specified elsewhere in this article:

(a) Real estate signs not exceeding twelve (12) square feet in area, which

advertise the sale, rental or lease of the premises upon which said signs are located only.

(b) Bulletin boards not over twenty-five (25) square feet in area, for public, charitable or religious institutions which are located on the premises of said institutions and which are permanently mounted on a pole or attached to a building or structure

(c) Signs denoting the architect, engineer or contractor when placed upon work under construction, and not exceeding sixteen (16) square feet in area.

(d) Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials.

(e) Traffic or other municipal signs, legal notices, railroad crossing signs, danger, and such temporary, emergency or nonadvertising signs as may be approved by the design and review board of the city.

(f) Political signs providing said signs are placed on property that is zoned residential and that individual signs are not over eight (8) square feet in size and that they are removed within ten (10) working days after the date of the election to which the signs pertain. No political signs permitted under this section shall be placed upon any public right-of-way or utility or drainage easement and the city engineer or his representative is authorized to remove and destroy any political sign placed on such right-of-way or easement.

(g) Professional name plates not exceeding three (3) square feet in area.

(h) Occupational signs not over four (4) square feet in area (on building).

(i) Signs erected inside a building and not visible through windows.

(j) Temporary window signs denoting prices of merchandise or special sales conducted or to be conducted in the building, structure or premises on

which the sign is located and providing that the total display area of all temporary and permanent advertising devices in the window does not exceed fifty per cent (50%) of the window area and that temporary signs do not remain more than twenty-one (21) days. Exceptions may be permitted by the design and review board. Ord. No. 72-8, § 3, 2-2-72)

Sec. 5-128. Building permits.

(a) **Plans and specifications.** No building permit shall be granted until after an application has been filed with the building official showing the plans and specifications, including dimensions, material and details of construction of the proposed structure, nor until all the provisions of this section relating to such structure have been complied with.

(b) **Agreement.** Before a permit can be granted for the installation of any sign, the applicant for said permit must submit an agreement signed by the owners of said property granting permission to applicant to install said sign and binding said owners, their heirs and assigns irrevocably, to permit the city through its agents to enter on said real property for the purpose of removing said sign as provided under this article and waiving and holding the city harmless from any damage to said real property and structure thereon occasioned by said removal.

(c) **Forms and content.** The building official may prescribe suitable regulations not inconsistent with the provisions of this article concerning: the form and content of all applications for the various type of permits herein required. (Ord. No. 72-8, § 4, 2-2-72)

Sec. 5-129. Signs under special permit.

(a) The following signs and variations in the requirements of this article may be authorized only by special permit from the design and review board with the approval of the building official upon a finding that the welfare of the city and its trade and commerce will not be adversely affected:

(1) Awning signs as provided for in section 5-148.

(2) Directional signs as provided for in section 5-154.

(3) Gasoline and oil service station signs as provided for in section 5-149.

(4) Ground signs and all other signs not specifically referred to in this article.

(5) Industrial park signs.

(6) Marquees on which signs or bulletins will be displayed.

(7) Pole or other permanent mounted reader boards.

(8) Shopping center signs including all business signs in shopping centers, except temporary window signs as provided for in section 5-127(j) of this article.

(9) Street clocks.

(10) Temporary banner and cloth signs, except political posters under eight (8) square feet.

(11) Temporary bulletin boards for public, charitable or religious institutions when they are not located on the premises of said institutions.

(12) Temporary real estate signs, subdivision signs and signs giving directions as to real estate for sale and not located on the premises to which they pertain.

(13) Temporary signs relating to events to take place within ninety (90) days.

(14) Permanent theater signs of all types.

(15) Temporary theater signs displayed outside of the building.

(16) Time and weather information signs.

(17) Roof signs.

(18) Signs painted on building surface.

(19) Traditional barber poles when illuminated and/or revolving or proposed as accessory sign in addition to signs permitted under section 5-136 of this article.

(20) Variations in the size, erection and construction when strict compliance would substantially decrease the effectiveness of the sign and the pub-

THE REPRODUCTION OF THIS DOCUMENT CANNOT BE IMPROVED DUE TO THE CONDITION OF THE ORIGINAL

lie welfare will not be adversely affected.

(b) The special permits provided for herein shall specify the terms and conditions under which the signs are to be maintained and removed. (Ord. So. 72-8, § 5, 2-2-72)

Sec. 5-130. Permit fees.

(a) So permit fees are required for the erection of signs exempted in section 5-18 or for those listed in subsections (a)(11), (12) and (13) of section 5-129 of this article.

(b) Before the issuance of each required sign permit a fee shall be paid to the building official, as follows:

(1) Signs twenty-five (25) square feet or less in size	\$10.00
(2) Signs over twenty-five (25) square feet but not over fifty (50) square feet	20.00
(3) Signs over fifty (50) square feet but not over one hundred (100) square feet	30.00
(4) All signs over one hundred (100) square feet	50.00

(c) For each temporary ground sign as defined in subsection (a) and (b) of section 5-157 there shall be no fee.

(d) The permit fees herein provided for shall cover the inspection (inspection fees for periodic maintenance listed in section 5-134) of the location of the proposed signs and the inspection during and after construction, and all monies so collected by the building official shall be turned over to the city collector for deposit in the general revenue fund of the city.

(e) Each face of a sign used for display or advertising purposes shall be taxed as a separate sign. During the progress of construction and erection thereof and at the conclusion thereof, the sign shall be inspected by the building official.

(f) If the sign is illuminated, an electrical permit and inspection by the electrical inspector shall be required. A fee covering the electrical permit and inspection shall be charged as provided by the electrical code. (Ord. No. 72-8, § 6, 2-2-72)

Sec. 5-131. Right to appeal.

Anyone applying for a permit for a sign under the provisions of this article, whose application has been denied, may appeal to the city council for the issuance of such permit, and the council may grant such permit and allow a variation in the strict application of the provisions and requirements of this article where there are practical difficulties or unnecessary hardships, or where the public interest will be best served by allowing such variation. (Ord. No. 72-8, § 7, 2-2-72)

Sec. 5-132. Sign location.

All signs must be located on the property of the business or building they advertise.

Setback lines are given as follows: pole sign, section 5-153; ground sign, section 5-150; and temporary sign, section 5-157, and gasoline and oil service stations, section 5-149. (Ord. No. 72-8, § 8, 2-2-72)

Sec. 5-133. Sign maintenance.

(a) Signs must be kept in good repair and supporting structures must be kept in upright condition.

(b) Painting is required every two (2) years, except where the sign is galvanized or otherwise treated to prevent rust, or unless made of noncorroding material.

(c) The building official shall order the removal of any sign that is not maintained in accordance with the provisions of this article. (Ord. So. 72-8, § 9, 2-2-72)

Sec. 5-134. Periodic inspections; fees

(a) It shall be the duty of the building official to make, as considered necessary, a thorough inspection of all signs in the city and a fee of five dollars (\$5.00) shall be charged for each inspection.

(b) If the sign is an illuminated sign, there shall be at the time of inspection by the building official, an additional inspection by the electrical inspector and a fee shall be charged as provided by the electrical code.

(c) In cases where signs are subject to electrical inspections the engineering department of the city may issue one permit for the electrical work and other construction and may issue a single receipt cover-

ing permit and fees of the electrical inspector. Separate accounting shall be made to the treasurer for all electrical inspection fees collected hereunder.

(d) If the inspection fees are not paid as herein provided, the sign, including standards and supports, shall be removed as provided for in the case of signs erected without a permit. (Ord. No. 72-8, § 10, 2-2-72)

Sec. 5-135. Identification and marking.

Every sign constructed or maintained shall be plainly marked with the name of the person, firm or corporation erecting or maintaining such sign; the permit number; date of erection; and voltage of any electrical apparatus. (Ord. No. 72-8, § 11, 2-2-72)

Sec. 5-136. Limitations on number of signs.

(a) Each building occupied by one person or business (with the exception of gasoline and filling stations which are covered elsewhere in this article) shall be allowed a maximum of two (2) signs, providing that the conditions of this article are met, which may be either a wall sign or a projecting sign, or a roof sign, or a permanently mounted reader board, or a pole sign, but the total number of signs shall not include more than one (1) sign of each of these types.

(b) If the business is located on a corner lot then it may have a wall sign or projecting sign on each street side of the building in addition to one pole sign.

(c) Businesses located in buildings or stores having more than one (1) tenant shall be allowed only on (1) sign which may be either a wall sign, projecting sign or permanently mounted reader board. If, however, a tenant on the ground floor of a combined office building complies with the provisions of section 5-153 he may be allowed a pole sign.

(d) Permanent painted signs on windows that comply with the provisions of this article are in lieu of a wall sign.

(e) One (1) nonilluminated, small scale professional or occupational sign as provided

in section 5-127(g) and (h) of this article and/or one (1) "store hours sign" may be lettered on the glass show window or entry door portion of each store or office front of the occupant in addition to the other signs permitted by this section. (Ord. No. 72-8, § 12, 2-2-72)

Sec. 5-137. Unlawful signs generally.

(a) Any new sign installed, erected, or maintained in violation of any provisions of this article shall be an unlawful sign.

(b) Any existing sign enlarged, rebuilt, structurally altered or relocated other than in accordance with the provisions of this article shall be an unlawful sign.

(c) Any existing sign which is no longer applicable to the property or building upon which such sign is located shall be considered an unlawful sign.

(d) Any sign legally existing under prior regulations, but which shall violate any provision of this article, may continue to be maintained and used subject to the following provisions:

(1) Any legally existing sign, under prior regulations that is moved to another location, either on the same or to other premises, shall be considered a new sign.

(2) Any legally existing sign that is enlarged or reconstructed shall be considered to be a new sign, except that neither the relettering, repainting nor ordinary maintenance of such sign, nor the repair or restoration to a safe condition after being damaged by storm or other accidental act, as shown and in accordance with the original sign permit, shall constitute such a change as to classify the sign as a new one.

(3) Any legally existing sign which is or becomes an immediate danger or hazard to persons or property because of being in an unsafe condition, or which obstructs any fire escape, window or door, is subject to the provisions of this article pertaining to the removal of dangerous and hazardous signs.

(4) Any legally existing sign is subject to the provisions of this article requiring

THE REPRODUCTION OF THIS DOCUMENT CANNOT BE IMPROVED DUE TO THE CONDITION OF THE ORIGINAL

that it be painted every two (2) years except where the sign is of noncorroding material or galvanized or otherwise treated to prevent rust, and that it must be kept in good repair and any supporting structures kept in an upright condition. (Ord. No. 72-8, § 13, 2-2-72)

(5) The features noted below shall be eliminated from all signs prior to February 1, 1973:

(i) All flashing lights and flashing devices of any nature;

(ii) All periodic illumination of any lights in a sign in any timing or sequence whatsoever;

(iii) All periodic changes in intensity of illumination;

(iv) All animation or moving parts of any nature. (Ord. No. 72-8, § 13, 2-2-72; Ord. No. 72-64, § 1, 7-19-72)

Sec. 5-138. Specific prohibited signs and devices.

The following signs and advertising devices are specifically prohibited in the city and no other section of this article shall be interpreted to permit any sign so prohibited:

(a) Billboards.

(b) Conflicting signs. Signs or devices which by color, location or design resemble or conflict with traffic-control signs or devices.

(c) Exterior use of advertising devices such as banners and pennants affixed on poles, wires or ropes and streamers, wind operated devices, flashing lights, and any other type of fluttering devices.

(d) Mechanical contrivances. No sign erected in the city shall contain flashers, animators, or mechanical movement or contrivances of any kind, excepting clocks, time and weather information and conventional barber symbols.

(e) Paper posters and painted signs applied directly to the wall of a building or pole or other supports.

(f) Portable signs are prohibited, except as provided for gasoline and oil service stations in section 5-149.

(g) Sign advertising an article or product not manufactured, assembled, processed, repaired or sold upon the premises upon which the sign is located.

(h) Sign advertising a service not rendered on the premises upon which the sign is located.

(i) Revolving signs of any type.

(j) Signs in residential districts for home occupation.

(k) Signs on parking lot light standards.

(l) Show or display signs placed in or on automobiles or other vehicles or written on the windows, doors or panels of automobiles or other vehicles when such vehicles are parked in an area of high public visibility for a period exceeding fourteen (14) hours, except Sundays and holidays. (Ord. No. 72-8, § 14, 2-2-72; Ord. No. 78-114, § 1, 9-20-78)

Sec. 5-139. Fire escape obstruction.

No sign shall be erected or maintained so as to prevent free ingress to or egress from any door, window or fire escape. No sign of any kind shall be attached to a stand pipe or fire escape. (Ord. No. 72-8, § 15, 2-2-72)

Sec. 5-140. Traffic hazards.

No sign or other advertising structure regulated by this article shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision, or at any location where, by reason of its position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device; or which makes use of the words "Stop", "Look", "Drive-in", "Danger" or any word, phrase, symbol or character in such manner as to interfere with, mislead or confuse traffic. Illuminated signs must be so shielded or contain lamps of such reduced intensity as may be prescribed by the building official to assure that they do

not constitute a traffic hazard. (Ord. No. 72-8, § 16, 2-2-72)

Sec. 5-141. Obscene matter.

It shall be unlawful for any person to display upon any sign or other advertising structure any obscene, indecent or immoral matter. (Ord. No. 72-8, § 17, 2-2-72)

Sec. 5-142. Violations, punishment; removal no defense.

(a) Any person who shall violate any provisions of this article shall be deemed guilty of a misdemeanor, and each day or part of a day such violation shall continue shall constitute a separate offense.

(b) Upon conviction, a person found violating any provisions of this article shall be punished as provided in section 1-8, Bridgeton Code. The fact that a sign has been removed shall be no defense to prosecution hereunder. (Ord. No. 72-8, 4 18, 2-2-72)

Sec. 5-143. Removal of signs; procedure generally.

(a) Unsafe signs may be removed as provided in the building code.

(b) The building official shall order the removal of all unlawful signs as provided for in the case of signs erected without a permit.

(c) If any sign is erected without a permit, the building official shall order it removed and if the order is not complied with within seven (7) days the building official shall have it removed at the expense of the person erecting or maintaining it, and the person causing it to be erected. If the owner or other person in charge of a sign fails to pay the annual electrical inspection fee provided for in section 5-130, the building official shall notify the owner or person charged with the sign that the inspection has been made and that the fee is due, and that the sign is to be removed within seven (7) days unless the fee is paid, and it not so removed the building official shall cause the same to be removed at the expense of the owner. Such expense shall be a lien against the property in favor of the city and shall be imposed and collected in the manner provided by ordinance for the imposition and collection of special tax bills.

(d) The building official is authorized to go upon any premises in the city for the purpose of removing signs under the provisions of this section. Signs removed by the building official shall be retained for the owner's account for a period of thirty (30) days and shall be returned to the owner upon payment of the expenses of the removal. If not claimed within that time they shall be the property of the city and may be destroyed or sold for the payment of expense of removal.

(e) The building official shall order the removal of all unlawful signs as provided for in section 5-137. (Ord. No. 72-8, § 19, 2-2-72)

Sec. 5-144. Unsafe signs.

The building official shall order the removal of any sign of immediate danger or hazard to persons or property as provided in the building code. It shall be unlawful for any person to maintain or to permit to remain upon any premises owned, leased, occupied or used by him, or it, with notice thereof, any unsafe or insecure sign liable to injure any person or property, or to maintain or permit to remain on any such premises any sign which because of condition or appearance would have a damaging effect upon other property in the city. (Ord. No. 72-8, § 10, 2-2-72)

Sec. 5-145. Roof signs.

(a) Every roof sign shall be constructed entirely of an incombustible material; the uprights, supports and braces shall be constructed entirely of metal, and shall be securely anchored or otherwise fastened or supported so that it will not constitute a menace to persons or property. All roof signs shall be so constructed or so erected as to stand the wind pressure of not less than thirty (30) pounds per square foot of area subjected to such pressure.

(b) No roof signs shall exceed, in square foot size, the linear front footage of the portion of the building the business occupies. No roof sign shall project higher than four (4) feet above the roof line and anchors thereof shall be kept in good repair. The building official shall order the

THE REPRODUCTION OF THIS DOCUMENT CANNOT BE IMPROVED DUE TO THE CONDITION OF THE ORIGINAL.

removal of any sign that is not maintained in accordance with the provisions of this section. (Ord. So. 72-8, § 21, 2-2-72)

Sec. 5-146. Wall signs.

(a) So wall sign shall extend above the roof line nor beyond the building line more than eighteen (18) inches, except, however, if the sign is illuminated the light reflectors may project six (6) feet, beyond the building line. No wall sign shall exceed, in square foot size, the linear front footage of the property located thereon, less the total square footage of any existing signs located on said property. All wall signs shall be made of incombustible materials and safely and adequately attached to such buildings.

(b) Signs painted on the building surface are permitted only by special permit as provided in section 5-129(a)(18) and must conform to all provisions of this article. (Ord. So. 72-8, § 22, 2-2-72)

Sec. 5-147. Projecting signs.

(a) A projecting sign relating to services, articles, and products within the building to which the sign is attached and which does not exceed twenty-five (25) square feet in area for each building or store fronting a public street or road shall be allowed. However, if a building is occupied by only one tenant and the front wall area adjoining a public street exceeds five hundred (500) square feet, such building may have a projecting sign with an area equal to five per cent (5%) of the area of the front wall of the building on which the sign is to be installed. The maximum permitted sign area, under any conditions, or any one building occupied by one tenant shall not exceed two hundred fifty (250) square feet.

(b) Buildings located on corner lots may have one such sign on each street or road side of the building, provided the building wall area adjoining each street is computed separately for each allowable sign area.

(c) So projecting sign shall extend more than four (4) feet six (6) inches from the building including structural supporting or extending members attached to the building.

(d) No projecting sign shall project nearer to the curb line than two (2) feet.

(e) No projecting sign shall extend downward nearer than ten (10) feet to the ground or pavement.

(f) No projecting sign shall extend above the roof line. Every projecting sign must be constructed and braced to withstand a horizontal wind pressure of not less than thirty (30) pounds for every square foot of surface exposed and shall be securely attached to the building wall in an approved manner.

(g) A projecting sign shall be constructed of incombustible material. (Ord. No. 72-8, § 23, 2-2-72)

Sec. 5-148. Awning signs, flags and banners.

So advertising sign, flag or banner shall be attached to or be suspended from any awning, except that a sign may be painted upon the valance of any canvas awning or in a single line of letters not more than six (6) inches in height, and the wording shall be confined to the following: the number of the premises; the name of the building or institution; and/or the general business or trade carried on in the building. Such sign shall not have a total length to exceed seventy-five per cent (75%) of the length of the valance and shall not advertise any particular article, nor shall any such sign refer to a price. (Ord. No. 72-8, § 24, 2-2-72)

Sec. 5-149. Filling station signs.

Advertising signs for gasoline and oil filling stations shall conform to the following requirements in lieu of any other requirements:

(a) One pole sign not exceeding thirty-six (36) square feet for each face situated on private property.

(b) The pole sign must be so located that no part of the sign may project beyond a five (5) foot setback line from the street or highway right-of-way.

(c) No pole sign shall extend downward nearer than ten (10) feet to the ground or pavement.

Cite as 616 F.Supp. 837 (E.D.Mo. 1985)

(d) Maximum height of pole sign is twenty-eight (28) feet.

(e) A wall sign not exceeding twenty-five (25) square feet in area and projecting no more than twelve (12) inches facing the street.

(f) Buildings on corner lots may have such a sign on each street side of the building.

(g) One portable sign on private property not exceeding twelve (12) square feet on each side. (Ord. No. 72-8, § 25, 2-2-72)

Sec. 5-150. Ground signs.

(a) No ground sign (as defined in section 5-125) shall be at any point over fifteen (15) feet above the ground level and shall have an open space of one (1) foot between the lower edge of such sign and the ground level.

(b) Every ground sign shall be stoutly constructed and anchored in a secure and substantial manner.

(c) The ends of all such signs shall be at least six (6) feet distant from any wall or fence, or any obstruction which would prevent a clear passage around.

(d) No ground sign shall exceed one hundred (100) square feet in area. Not more than one ground sign shall be erected on any one lot or tract of land, or one sign for each three hundred (300) feet of frontage and located at least three hundred (300) feet apart on such lot or tract of land.

(e) No ground sign when erected on a lot fronting on intersection streets shall be erected within fifty (50) feet of the intersection of the streets.

(f) Ground signs may be erected or installed using the same setback required for pole signs (sign must be located so that no part of the sign projects beyond a five (5) foot setback line from the street or highway right-of-way) if the ground sign does not exceed thirty-six (36) square feet.

(g) Any ground sign in excess of thirty-six (36) square feet must not extend beyond the established building line. (Ord. No. 72-8, § 26, 2-2-72)

Sec. 5-151. Industrial park signs.

When the general welfare of the inhabitants of the city will not be adversely affected the special permit for a sign in industrial parks may take into consideration the greater distance from the adjacent streets and highways of certain buildings, and the design and review board may grant variations as to size, area and location of the signs in such industrial parks. (Ord. No. 72-8, § 27, 2-2-72)

Sec. 5-152. Marquees.

(a) Marquees and marquee signs may extend to a point two (2) feet back of the curb line, but no such marquee or sign shall extend downward nearer than eleven (11) feet above the level of the sidewalk at its lowest level.

(b) There may be placed thereon an illuminated sign which may extend the entire length and width of the marquee, provided such sign does not extend more than nine (9) feet above nor one (1) foot below such marquee, but under no circumstances shall the sign have a vertical width of greater than nine (9) feet.

(c) No additional sign shall be attached to a marquee. (Ord. No. 72-8, § 28, 2-2-72)

Sec. 5-153. Pole signs generally.

(a) One (1) pole sign shall be allowed for each building or store fronting a public street which is occupied by only one person, or business, providing that not more than one (1) sign shall be allowed on the poles supporting the sign. Subject, however, to the specific provisions of this article regarding the total number of sign allowed for each business as provided for in section 5-136.

(b) Pole signs shall not exceed in square feet the linear footage of property located thereon less any existing signs.

(c) Maximum height of pole sign is thirty (30) feet.

(d) The pole sign must be so located that no part of the sign may project beyond five (5) foot setback line from the street highway right-of-way.

THE REPRODUCTION OF THIS DOCUMENT CANNOT BE IMPROVED DUE TO THE CONDITION OF THE ORIGINAL

(e) No pole sign shall extend downward nearer than ten (10) feet to the ground or pavement.

(f) A pole sign shall be constructed of incombustible material.

(g) For buildings or stores fronting a public street that have more than one tenant, a pole sign shall be allowed not to

floor tenant having a minimum of fifty (50) feet store frontage, providing that the pole sign complies with the above regulations.

(h) In the case of a multiple occupancy building or project, one (1) pole sign containing the name or use of the building for each wall adjacent to a public street, subject, however, to the specific provisions of this article regarding the total number of signs of all types. Tenants of said building or project shall not be permitted pole signs. (Ord. No. 72-8, § 29, 2-2-72)

Sec. 5-154. Small directional signs.

Small post signs indicating the direction to a business (exit and entrance) may be erected and maintained providing:

(a) The building official shall investigate and make his finding that the sign will serve a public purpose and that public necessity for such directional sign exists;

(b) Shall issue its special permit therefor and

(c) Such signs shall not exceed eighteen (18) inches by twenty-four (24) inches in size, and shall be installed under the supervision of the building official in a manner and at a height so as not to interfere with the ordinary and lawful use of the street. (Ord. No. 72-8, § 30, 2-2-72)

Sec. 5-155. Reader signs.

Permanently mounted reader boards are permitted with special permit by the design and review board, provided they comply with all provisions of this article. (Ord. No. 72-8, § 31, 2-2-72)

Sec. 5-156. Shopping center signs.

When the general welfare of the inhabitants of the city will not be adversely

affected the special permit for signs in shopping centers may take into consideration the greater distance from the adjacent streets and highways of certain buildings, and the design and review board may grant variations as to size, area and location of the signs in such shopping centers. (Ord. No. 72-8, § 32, 2-2-72)

Sec. 5-157. Temporary signs.

(a) Temporary around signs advertising or announcing the future use of development of the property on which such signs are located may be maintained subject to the provisions of this article, provided such signs do not exceed one hundred (100) square feet in area or remain longer than six (6) months.

(b) "For Rent" and "For Lease" signs in commercial or industrial districts for new buildings shall not exceed forty-eight (48) square feet or remain more than ninety (90) days after the building is completed.

(c) "For Rent" and "For Lease" signs in commercial, local business, or industrial districts for existing buildings (when they become vacant) shall not exceed twelve (12) square feet or remain more than ninety (90) days, but may be renewed upon request.

(d) Temporary ground signs must be located so that no part of the sign projects beyond a five (5) foot setback line from the street or highway right-of-way.

(e) "For Rent", "For Sale" or "For Lease" signs for new subdivisions and signs advertising the development of a new subdivision, shall not exceed forty-eight (48) square feet or remain more than ninety (90) days after the subdivision is completed. Said signs must be posted on the subdivision property. Security in the form of a

certified check in the amount of one hundred dollars (\$100.00) shall be deposited with the city clerk, to be refunded upon satisfactory compliance with permit requirements. (Ord. No. 72-8, § 33, 2-2-72)

Sec. 5-158. Reflectors and lights.

Goose neck reflectors and lights are permitted on ground signs, and wall signs if the reflectors are provided with proper glass lenses concentrating the illumination

Cite as 626 F.Supp. 837 (E.D.Mo. 1985)

upon the area of the sign so as to prevent glare upon the street or adjacent property. (Ord. No. 72-8, § 34, 2-2-72)

Sec. 5-159—5-168. Reversed.

ARTICLE VII. MECHANICAL CODE

Sec. 5-169. Adopted.

The St. Louis County Mechanical Code, as amended (section 1101.025 of the county Code), adopted May 4, 1974, is hereby adopted as the mechanical code of the city as fully as if set out herein. (Ord. No. 78-88, § 1(6), 7-12-78)

Editor's note—Ord. No. 78-88, adopted July 12, 1978, did not specifically amend this Code; hence inclusion of § 1(6) as § 5-169 was at the discretion of the editor. Sec. 5-170. Terms of agreement; compensation; restrictive provisions.

(a) *Terms of agreement.* The county shall provide the city code enforcement services as specified in section 5-169, commencing on May 3, 1978, and continuing from year to year; however either party may terminate upon giving ninety-day prior written notice.

(b) *Compensation.* The county shall collect all fees and shall retain two-thirds of the fees and remit quarterly one-third of the fees to the city.

(c) *Restrictive provisions.* If the city has adopted provisions more restrictive than those contained in the applicable county code, the city shall approve all plans prior to submission to the county's department of public works. The city shall approve all plans for compliance with zoning or other regulatory ordinances prior to submission to the county's department of public works. (Ord. No. 78-49, § 2, 5-3-78)

Editor's note—Ord. No. 78-49, adopted May 3, 1978, did not specifically amend this Code; hence inclusion of § 2 as § 5-170 was at the discretion of the editor.

EXHIBIT B

BILL NO. 3087

As revised 8-15-84

ORDINANCE NO. 84-54

BY:

AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 5 OF THE BRIDGETON CODE OF ORDINANCES TO PROVIDE REVISED REGULATIONS FOR SIGNS AND STREET GRAPHICS.

WHEREAS changes in recent years have indicated a need for a complete revision of the sign regulations adopted in 1972; and

WHEREAS the Design and Review Board, after review and study, has, by letter dated March 29, 1984, recommended a completely new set of sign regulations; and

WHEREAS the City Council finds the present sign regulations inadequate to afford the control of the design and placement of signage appropriate to current development.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIDGETON, MISSOURI, AS FOLLOWS:

Section 1. Article VI of Chapter 5 of the Bridgeton Code of Ordinances is repealed in its entirety and a new Article VI of Chapter 5 enacted to read as follows:

PROPOSED SIGN REGULATIONS— JANUARY 1, 1984

Section 5-125	Statement of Purpose
Section 5-126	Definitions
Section 5-127	Items of Information
Section 5-128	Allowed
Section 5-129	Table of Design Elements
Section 5-130	Manner of Display
Section 5-131	Construction and Maintenance
Section 5-132	Street Graphics Exempt
Section 5-133	Street Graphics
Section 5-134	Prohibited
Section 5-135	Special Graphics
	Permits and Fees
	Non-Conforming Street
	Graphics and Signs
	Programs for Graphics

THE REPRODUCTION OF THIS DOCUMENT CANNOT BE IMPROVED DUE TO THE CONDITION OF THE ORIGINAL

Section 5-126	and Signs
Section 5-137	Variances
	Powers of Board of
Section 5-138	Adjustment
Section 5-139	Removal of Signs

ARTICLE VI STREET GRAPHICS

SECTION 5-125—STATEMENT OF PURPOSE

The purpose of these regulations is to create the legal framework for a comprehensive but balanced system of street graphics, and thereby to facilitate an easy and pleasant communication between people and their environment. With this purpose in mind, it is the intention of these regulations

to authorize the use of street graphics which are:

- Compatible with their surroundings;
- Appropriate to the type of activity to which they pertain;
- Expressive of the identity of individual proprietors or of the community as a whole; and
- Legible in the circumstances in which they are seen.

SECTION 5-126—DEFINITIONS

Unless the content otherwise requires, the following definitions shall be used in the interpretation and construction of this article.

ACTIVITY: An economic unit designated in the classification system given in the 1972 Standard Industrial Classification Manual published by the U.S. Department of Commerce, Office of Federal Statistical Policy and Standards.

DISTRICT: Any section of the City of Bridgeton designated by the Zoning Ordinance as a residential, business, manufacturing or special district.

FACE: Any surface against or through which a street graphic is displayed or illustrated.

GROUND SIGN: A street graphic supported by one or more uprights, posts or bases placed upon or affixed in the ground and not attached to any part of a building and that does not exceed the maximum

height designated for a ground sign in Section 5-128.

ILLUMINATED SIGN: A street graphic which has characters, letters, figures, designs or the outline illuminated by electric lights or luminous tubes.

MARQUEE SIGN: A street graphic affixed to a permanent canopy over the entrance to a building.

POLE SIGN: A street graphic supported by one or more poles placed in the ground and not attached to any part of a building and that exceeds the maximum height designated for a ground sign in Section 5-128.

PROJECTING SIGN: A street graphic attached to and projecting from a building and not in the same plane as the wall.

READER BOARD: Any street graphic that has changeable or removable lettering and which is permanently mounted as a wall, pole, or ground sign.

ROOF SIGN: A street graphic painted, erected, constructed, or maintained upon the roof of a building.

SIGN AREA: Total area of the space used to display a street graphic not including supporting poles and structure. For a sign with two faces that are parallel and supported by the same poles or structure, the area of the sign equals one-half the total area of the two faces. For a sign with two or more faces supported by the same poles or structure but not parallel, the area of the sign equals the total area of all faces.

STREET GRAPHIC: Any character or letter and/or figure, symbol, design, word, model or device, and attendant background field, used to attract attention and/or convey a message and which is visible to any area outside of a building. The term includes banners, pennants, streamers, moving mechanisms and lights.

WALL SIGN: A street graphic painted on or attached to a wall of a building and in the same plane as such wall.

WINDOW SIGN: A street graphic applied, painted or affixed to or in the window of a building.

ZONING ORDINANCE: The zoning ordinance of the City of Bridgeton, Missouri.

SECTION 5-127—ITEMS OF INFORMATION ALLOWED

a) On the property which it occupies, each activity is entitled to display, on each street and parking lot on which it fronts, street graphics containing a total of items of information up to the maximum designated in Section 5-128. However if the name of the activity contains more than the maximum number of items of information permitted, such name may be displayed once on each frontage provided no other graphic for that activity is displayed on the building or premises.

b) An "item of information" means any of the following: a syllable of a word; an abbreviation; a number; a symbol; a geometric shape. In addition, street graphics combining several different geometric or non-geometric shapes of unusual configuration are to be assessed one additional item for each non-continuous plane.

c) In computing items of information, lettering less than three inches in height as well as street address numbers of any size are not included if contained in a window sign or a wall sign.

SECTION 5-128—TABLE OF DESIGN ELEMENTS

The accompanying Table of Design Elements shall apply to all street graphics and signs governed by these regulations. For purposes of applying such Table the following criteria shall be used:

a) Except as otherwise provided in this subsection, commercial activities are those first permitted by the Zoning Ordinance in a Business District, and industrial activities are those first permitted by the Zoning Ordinance in a Manufacturing District. Institutional activities include those in Standard Industrial Classification Categories

805 (Nursing and Professional Care Facilities); 806 (Hospitals); 821 (Elementary and Secondary Schools); 822 (Colleges, Universities, Professional Schools and Junior Colleges); 841 (Museums and Art Galleries); 842 (Arboreta, Botanical Gardens and Zoological Gardens); 866 (Religious Organizations).

b) Locale "A" refers to a location fronting on and facing a parking lot, and 30 feet or more feet from the street right-of-way and not visible from Interstate or 70 and 270.

Locale "B" refers to a location fronting on and within 30 feet of the right-of-way of any street not included in Locale "D" or "C".

Locale "C" refers to a location fronting on and facing within 30 feet of the right-of-way of St. Charles Rock Road, Natural Bridge Road and Lindbergh Boulevard.

Locale "D" refers to a location fronting on and facing Interstate 70 and 270.

c) Height of a ground, pole, or projecting sign is measured from the ground level at or below the sign. Height of a roof sign is measured from the top of the walls where the roof begins.

d) Size of a wall sign is expressed as a percentage of the signable area. Signable area is the area of a wall of the building exclusive of doors, windows and major architectural details. Wall signs placed in the space between windows may not exceed in height more than two-thirds the distance between the top of a window and the sill of the window above. Wall signs may not extend above the second story of building having three or more stories; provided that in local "D" there may be not more than one wall sign at the top of the wall.

e) Window signs may be located only in ground floor windows.

THE REPRODUCTION OF THIS DOCUMENT CANNOT BE IMPROVED DUE TO THE CONDITION OF THE ORIGINAL

TABLE 1. DESIGN ELEMENTS

Locale	Max. Items to be Displayed	Pole Sign			Projecting Sign			Ground Sign			Roof Sign			Wall Sign	Permanent Window Sign	Permanent Window Sign
		Max. Area Sq. Ft.	Max. Height Ft.	Min. Height Ft.	Max. Area Sq. Ft.	Max. Height Ft.	Min. Height Ft.	Max. Area Sq. Ft.	Max. Height Ft.	Min. Height Ft.	Max. Area Sq. Ft.	Max. Height Ft.	Min. Height Ft.			
COMMERCIAL ACTIVITY SURROUNDED BY OR BORDERED ON ALL SIDES EXCEPT THE REAR PROPERTY LINE BY COMMERCIAL AND/OR INDUSTRIAL ACTIVITIES																
A	12	Not Permitted	10	15	10	15	4	10	7	7	20	20	20	20	20	20
B	9	30	20	20	30	20	10	30	10	10	20	20	20	20	20	20
C	9	50	25	25	50	25	10	50	10	10	20	20	20	20	20	20
D	8	100	25	25	100	25	10	100	10	10	20	20	20	20	20	Not Permitted
COMMERCIAL ACTIVITY BOUNDED ON EITHER SIDE AND/OR ACROSS A STREET FROM INSTITUTIONAL AND/OR RESIDENTIAL ACTIVITIES																
A	12	Not Permitted	6	12	6	12	8	10	5	5	15	15	15	15	15	15
B	9	20	15	15	20	15	10	20	7	7	15	15	15	15	15	15
C	9	30	20	20	30	20	10	30	7	7	15	15	15	15	15	15
D	8	60	20	20	60	20	10	60	Not Permitted	Not Permitted	15	15	15	15	15	Not Permitted
INDUSTRIAL ACTIVITY SURROUNDED BY OR BORDERED ON ALL SIDES EXCEPT REAR PROPERTY LINE BY COMMERCIAL AND/OR INDUSTRIAL ACTIVITIES																
A	12	Not Permitted	10	15	10	15	8	10	7	7	20	20	20	20	20	20
B	9	30	20	20	30	20	10	30	10	10	20	20	20	20	20	20
C	9	50	25	25	50	25	10	50	10	10	20	20	20	20	20	20
D	8	100	25	25	100	25	10	100	10	10	20	20	20	20	20	Not Permitted
INDUSTRIAL ACTIVITY BOUNDED ON EITHER SIDE AND/OR ACROSS A STREET FROM INSTITUTIONAL AND/OR RESIDENTIAL ACTIVITIES																
A	12	Not Permitted	6	12	6	12	8	10	5	5	15	15	15	15	15	15
B	9	20	15	15	20	15	10	20	7	7	15	15	15	15	15	15
C	9	30	20	20	30	20	10	30	7	7	15	15	15	15	15	15
D	8	60	20	20	60	20	10	60	Not Permitted	Not Permitted	15	15	15	15	15	Not Permitted
INSTITUTIONAL ACTIVITY ANYWHERE																
A	12	Not Permitted	6	12	6	12	8	10	5	5	15	15	15	15	15	15
B&C	9	25	15	15	25	15	10	25	7	7	15	15	15	15	15	15
D	8	60	20	20	60	20	10	60	Not Permitted	Not Permitted	15	15	15	15	15	Not Permitted

THE REPRODUCTION OF THIS DOCUMENT CANNOT BE IMPROVED DUE TO THE CONDITION OF THE ORIGINAL

SECTION 5-129—MANNER OF DISPLAY

Notwithstanding anything else contained in this Article VI, the following restrictions shall govern all street graphics:

a) Provided that the items of information allowance authorized by Section 5-128 is not exceeded, street graphics may be displayed as ground signs, pole signs, wall signs, window signs, projecting signs, roof signs or special graphics except as prohibited by Sections 5-128 and 5-129.

b) A single activity that is the sole occupant of the premises may have up to two street graphics, provided that such activity fronting on two or more streets and parking lots or pedestrian malls or walks may have up to four street graphics, no more than two of which may face the same frontage.

c) For a building occupied by more than one activity and for groups of buildings for which off-street parking facilities are provided in common for all occupants, there shall not be more than one pole or ground sign facing each street upon which the building or group of buildings fronts, and not more than one wall or projecting sign for each activity. The maximum size restrictions for such pole and ground signs may be increased by up to 50 percent if three or more activities share the sign.

d) It shall be unlawful for any person to display upon any street graphic or supporting structure any obscene, indecent or immoral matter.

e) A ground or pole sign which is over six square feet in area may be displayed only on a frontage of 70 feet or more and may not be closer than 70 feet to any other ground or pole sign which is over six square feet in size.

f) Projecting signs may project no more than four feet six inches from the building and are not permitted at the intersection of building corners except at right angles to a building wall. No projecting sign may be closer than 30 feet to any other projecting sign.

g) All street graphics may be illuminated and/or non-illuminated except as prohibited by this Article VI.

SECTION 5-130—CONSTRUCTION AND MAINTENANCE

a) All street graphics, signs and supporting structures shall comply with applicable requirements of the building, electrical and fire prevention codes of the City, including the requirements of Sections 5-20 and 5-85.

b) Street graphics, signs and supporting structures must be maintained in good repair and appearance. The City Engineer or his designated representative shall order the removal of any street graphic, sign or structure not so maintained.

c) No street graphic or sign shall be erected or maintained so as to prevent free ingress to or egress from any door, window or fire escape. No street graphic of any kind shall be attached to a stand pipe or fire escape.

d) No street graphic or sign shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision; or at any location where, by reason of its position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device; or which makes the use of the words "Stop", "Look", "Drive-in", "Danger" or any word, phrase, symbol or character in such manner as to interfere with, mislead or confuse traffic. Illuminated signs must be so shielded or contain lamps of such reduced intensity as may be prescribed by the City Engineer or his designated representative to assure that they do not constitute a traffic hazard.

e) No part of any street graphic or sign shall be located closer than five feet to a street right-of-way.

SECTION 5-131—STREET GRAPHICS EXEMPT

The following street graphics are exempt from the provisions of these regulations:

a) Temporary real estate signs not over 12 square feet in area in Residential Districts or 48 square feet in area in Business

and Manufacturing Districts which advertise the sale, rental or lease of only the premises upon which the sign is located and which are of professional quality in appearance; provided that not more than two such signs are permitted on a single premises.

b) Reader Boards not over 15 square feet in area which are located on the premises of a public, charitable or religious institution and which are permanently mounted.

c) Temporary signs not over 48 square feet in area denoting the architect, engineer, project name, source of financing, and/or contractor when placed upon work under construction provided that not more than two such signs are permitted on a single premise.

d) Municipal signs, legal notices, traffic control devices, and such temporary of emergency non-advertising directional signs as may be approved by the City Engineer or his designated representative.

e) Political signs not over 8 square feet in area that are placed in a Residential District only and that are removed within 10 working days after the date of the election to which they pertain. The City Engineer or his designated representative is authorized to remove and destroy without notice, political signs placed on any public right-of-way or utility or drainage easement.

f) Signs not over 3 square feet in area located on residential property and designating only the name of the occupant and/or the address of the premises where displayed.

g) Garage sale signs not over 6 square feet in total area provided they are displayed for a period not exceeding 2 days and further provided they are displayed only on the premises where the sale they refer to is being held.

h) The official flag of the United States of America, the State of Missouri, the County of St. Louis and the City of Bridgeton when displayed on a pole not exceeding 30 feet in height. The official flag of any other nation or state or of a church, when

displayed on a pole not exceeding 30 feet in height, provided that such flags are displayed on not more than one pole.

i) Temporary window signs not exceeding in size 15 percent of the window area and displayed for a period not exceeding 14 days.

j) Temporary graphics as may be authorized under Section 5.11 of the Zoning Ordinance.

SECTION 5-132—STREET GRAPHICS PROHIBITED

Except as provided in Sections 5-131(j), 5-133 and 5-135 the following street graphics are specifically prohibited:

a) Graphics advertising a service not provided or an article or product not manufactured, assembled, processed, prepared or sold upon the premises upon which the graphic is located.

b) Graphics which by color, location and/or design resemble or conflict with traffic-control signs or signals.

c) Devices such as flags, banners, streamers and/or pennants affixed on poles, wires, or ropes, except as provided in Section 5-131(h); flashing lights, fluttering or wind operated devices, and flashers, animators or mechanical movement or contrivances of any kind.

d) Paper posters and painted signs applied directly to the wall of a building or a pole or other support.

e) Portable street graphics of any type.

f) Revolving street graphics of any type.

g) Street graphics in residential districts relating to home occupations.

h) Street graphics attached to parking lot light standards.

i) Open flames and torches.

SECTION 5-133—SPECIAL GRAPHICS

a) In Business and Manufacturing District marquee signs are permitted for all activities. Marquee signs may extend not more than six feet above nor more than one foot below the canopy; provided that such sign shall be at least eight feet above the level of the ground beneath it. Marquee

signs shall not exceed the allowable size of a pole sign at the same location.

b) Time-and-temperature devices, as well as electronic and non-electronic reader boards, for all activities are permitted in all Business and Manufacturing Districts. They may be displayed as a pole, ground or projecting sign, and are subject to the regulations applicable to such signs at the same location. No such device may be closer than 300 feet to any other such device.

c) Signs not exceeding six square feet in area that provide direction only to pedestrian or motor vehicular traffic entering, leaving or on the premises where such signs are located are permitted in all Districts.

d) Signs not exceeding 30 square feet in area providing information to the user of a drive-up window on the premises are permitted in all Business and Manufacturing Districts.

e) Limitations with respect to items of information displayed apply to all special graphics except the numerals indicating the time and/or temperature, letters on reader boards which are less than five inches in height, and graphics as permitted under Sub-sections (c) and (d) above.

SECTION 5-134—PERMITS AND FEES

No permits or fees are required for signs listed in Section 5-131. Permits shall be secured for all other permitted signs prior to their erection, alteration or refacing. Prior to the issuance of a permit for a sign, the design of the street graphic shall be reviewed and approved by the Design and Review Board for aesthetic compatibility with the surrounding area, and a fee shall be paid to the City in accordance with the following schedule.

a) Signs less than twenty-five (25) square feet in size—\$15.00

b) Signs at least twenty-five (25) square feet but less than fifty (50) square feet in size—\$25.00.

c) Signs at least fifty (50) square feet but less than one hundred (100) square feet in size—\$50.00.

d) All signs one hundred (100) square feet or larger in size—\$100.00.

The permit fees herein provided for shall cover the inspection of the location of the proposed sign and the inspections during and after construction.

SECTION 5-135—NON-CONFORMING STREET GRAPHICS AND SIGNS

a) Any street graphic and/or sign lawfully erected and in existence at the effective date of this Article VI of Chapter 5 of the City Code of Ordinances or any amendment thereto that does not conform to the regulations pertaining to street graphics and signs contained in said article, may be continued, except as otherwise provided herein, provided it shall be kept in good repair and maintenance including repainting or refacing with the identical street graphic.

b) Whenever any non-conforming sign is damaged or destroyed by any means to the extent of sixty (60) percent or more of its replacement value at that time, the sign may be rebuilt or replaced and used thereafter only in conformance with the regulations pertaining to street graphics and signs.

c) Whenever any non-conforming sign ceases to be used or does not contain a street graphic applicable to an activity on the premises for a period of six months or longer, the sign may be used thereafter only if it is brought into conformity with the provisions of the regulations pertaining to street graphics and signs.

d) Whenever the non-conforming street graphic on a sign is to be changed in any respect to a new or different street graphic, whether pertaining to the same or a different activity, the new or different street graphic shall conform to the regulations on items of information allowed contained in Sections 5-127 and 5-128.

e) A non-conforming street graphic and/or sign may be relocated on the same or different premises and/or enlarged only if both the street graphic and the sign are brought into conformity with the provisions

of the regulations pertaining to street graphics and signs.

SECTION 5-136—PROGRAMS FOR GRAPHICS AND SIGNS

a) The owner or developer of a tract of land, comprising an area of not less than one acre and which is proposed as the site for a single integrated development consisting of one or more buildings and associated off-street parking and loading areas may propose to the Design and Review Board an overall program of graphics and signs for such development. The program of graphics and signs shall include necessary special graphics and shall provide styles, sizes, locations and colors appropriate to the function and architectural character of the proposed development and compatible with existing development on adjacent property. The program shall conform to all requirements of this Article V except those regarding the size, location type and number of signs which may be varied by the Board if it finds the overall program to be in harmony with the intent and purpose of the sign regulations.

b) Upon approval of an overall program of graphics and signs by the Design and Review Board, no permit shall be issued for a sign and/or graphic on the premises covered by the program which does not conform with the approved program. Applications for such permits shall be processed in the same manner as any other application for a sign permit and shall be subject to the same schedule of permit fees.

c) If the owner or developer of the tract of land fails or is unable to carry out the plan for development of the site in a timely manner, the Design and Review Board may rescind its approval of the overall program for graphics and signs. Such rescission shall

provide an opportunity for the owner or developer to appear before the Board to state his views on the contemplated action.

SECTION 5-137—VARIANCES

a) Any person desiring a variation in the regulations pertaining to street graphics

and signs, or who is aggrieved by any decision made by the City Engineer or his designated representative in administering such regulations, may appeal to the City Council. Such appeal shall be taken within thirty (30) days of the date of denial of a permit for a sign, by filing with the City Engineer a notice of appeal specifying the grounds thereof. The City Engineer shall forthwith transmit to the City Council all the papers constituting the record upon which the action appealed from is taken. Six (6) affirmative votes of the City Council shall be required to grant a variance from or reverse a decision made by the City Engineer or his representative in administering the regulations pertaining to street graphics and signs.

b) To vary the regulations the City Council shall make a finding of fact based upon the evidence presented to it in each specific case, showing that all of the following conditions exist:

- 1) That the conditions upon which the requested variation is based will result in a particular hardship upon the appellant, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.
- 2) That the conditions upon which the requested variation is based are not generally applicable to other property or similar activities in the City.
- 3) That the alleged difficulty or hardship has not been created by any person acquiring or holding an interest in the property since June 6, 1984.
- 4) That the granting of the variation will not endanger the public safety, or be detrimental to the public welfare or substantially injurious to other property or activities in the neighborhood in which the property is located.

The City Council may impose such conditions and restrictions upon the premises benefitted by a variation as may be necessary to prevent injurious effects therefrom upon other property or activities in the neighborhood and to better carry out the general intent of the regulations.

SECTION 5-138—REMOVAL OF SIGNS

a) The City Engineer or any member of his department designated by him is authorized to remove or have removed any unlawful sign, or any sign erected without a permit, provided notice and opportunity to be heard are given to the owner or person in charge of a sign as hereinafter set forth.

b) Notice and opportunity to be heard shall be given to the owner or person in charge of such signs as follows:

1) Notice and opportunity to be heard shall be given to the owner or person in charge of a sign prior to the removal of any such sign except in a situation determined by the City Engineer or his designated representative to be an "Emergency Situation". In all Emergency Situations, notice and opportunity to be heard shall be given to the owner or person in charge of a sign as soon as possible after the sign has been removed. As used herein Emergency Situations shall include those situations where signs are erected in areas or are maintained in a condition which pose a real and imminent danger or hazard to the safety of others or which are a menace to traffic.

2) The notice required hereunder shall be in writing and shall be mailed to the owner or person in charge of the sign as reflected in the official records. If advance notice and opportunity to be heard are required hereunder, notice shall be mailed at least seven business days in advance of any removal. In the event the name and address of the registered owner or person in charge of a sign cannot be ascertained, notice shall be posted in a conspicuous place where the sign is erected. The notice shall specify the description of the sign, the place from which it was or will be removed, the reason for the removal, the amount of any actual

the owner's right to a hearing concerning the removal, the manner in which a hearing may be obtained or a bond posted, the right to bring a representative to the hearing, and the date after which the sign will be sold.

3) The hearing provided hereunder shall be held before the City Engineer or his

designated representative. Formal rules of evidence shall not apply; however, the party shall have the right to present evidence, confront and cross-examine witnesses, and receive a written decision based upon the facts adduced at the hearing. An owner may request a hearing either orally or in writing and the hearing, except upon the owner's request with the consent of the City, shall be held within twenty-four hours of the hearing request; but if such hearing is not requested within seven business days after mailing or posting of the notice, as above provided, the sign may be removed.

4) The City Engineer or his designated representative shall, within two business days of conducting a hearing under this section, state in writing his decision as to whether such sign is unlawful or erected without a permit, along with his reasons for so finding. The written decision, along with the reasons for such decision, will be mailed or posted in the manner set forth herein for providing notice of hearing. Such written decision shall constitute a full and final determination of the matters in dispute.

c) The City Engineer or his designated representative is authorized to go upon any premises in the City for the purpose of removing signs under the provisions of this section:

- 1) for which it has been determined that an Emergency Situation exists;
 - 2) for which no hearing has been requested within seven business days of the mailing or posting of notice; or
 - 3) for which a final determination has been made that the sign is unlawful or has been erected without a permit.
- d) The owner or person in charge of any sign so removed may recover same upon furnishing evidence of his identity and ownership of the sign, signing a release and payment of all costs, expenses and charges involved in removal and storage of such sign, or posting bond therefor pending the outcome of any hearing requested.

e) Any sign not claimed within thirty (30) days after removal, may be destroyed or sold in any commercially reasonable manner, and the proceeds of the sale applied

THE REPRODUCTION OF THIS DOCUMENT CANNOT BE IMPROVED DUE TO THE CONDITION OF THE ORIGINAL

toward the charges for removal and storage, and the balance of the proceeds, if any shall be paid to the City's general funds. Section 2. This ordinance shall be in full force and effect from and after its passage and approval.

PASSED THIS 15th DAY OF August, 1984.

APPROVED THIS 15th DAY OF August, 1984.

/s/ E.W. Bill Abram
E.W. (Bill) Abram, Mayor

ATTEST:

/s/ Mary E. Oellermann
Mary E. Oellermann, City Clerk

JUDGMENT

Findings of fact and conclusions of law, dated this day, are hereby incorporated into and made a part of this judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be and the same is entered in favor of defendant City of Bridgeton.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, under the circumstances, plaintiff's requests for an award of attorney's fees pursuant to 42 U.S.C. § 1988 and for hearing thereon be and the same are denied.



Clarence J. DAU and Geraldine A. Dau,
Husband and Wife, Plaintiffs.

v.

STORM LAKE PRODUCTION CREDIT
ASSOCIATION and Kenneth
Stephens, Defendants,

No. C 84-1140,

United States District Court,
N.D. Iowa, W.D.

Dec. 30, 1985.

Agricultural loan borrowers filed complaint against production credit association

purporting to assert violations of federal and state statutes, Federal and State Constitutions, and state common law rights arising out of certain loan transactions which occurred in 1983. On production credit association's motion to dismiss as well as on borrowers' notice of rescission default, the District Court, Donald E. O'Brien, Chief Judge, held that: (1) agricultural loans were exempt from requirements of truth in lending statute; (2) production credit association was a "creditor," rather than a "debt collector," under the Debt Collection Practices Act, and thus could not be liable to borrowers for alleged violations of Act; (3) borrowers' complaint against production credit association failed to state a valid claim for violations of federal securities laws in view of fact that complaint concerned neither securities nor investment companies; and (4) stock of production credit association, as stock of an instrumentality of the United States, was exempt from Iowa Blue Sky Law.

Order accordingly.

1. Consumer Credit § 33

requirements of truth in lending statute [15 U.S.C.A. § 1603(1)]. Truth in Lending Act, §§ 102 et seq., 104(1), 15 U.S.C.A. §§ 1601 et seq., 1603(1).

2. Consumer Protection § 10

Production credit association was a "creditor," rather than a "debt collector," under the Debt Collection Practices Act [15 U.S.C.A. § 1692 et seq.], and thus could not be liable to borrowers for alleged violations of Act. Consumer Credit Protection Act, § 802 et seq., as amended. 15 U.S.C.A. § 1692 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

3. Securities Regulation § 136, 219

Agricultural loan borrowers' complaint against production credit association failed

DAU v. STORM LAKE PRODUCTION CREDIT ASS'N

Cite as 626 F.Supp. 862 (N.D.Iowa 1985)

to state a valid claim for violations of federal securities laws in view of fact that complaint concerned neither securities nor investment companies. Securities Act of 1933, § 1 et seq., 15 U.S.C.A. § 77r et seq.; Securities Exchange Act of 1934, § 1 et seq., 15 U.S.C.A. § 78u et seq.

4. Securities Regulation § 256

Stock of production credit association, as stock of an instrumentality of the United States, was exempt from Iowa Blue Sky Law [I.C.A. § 502.201].

5. Consumer Protection § 8

Agricultural loan borrowers had no claim against production credit association under Real Estate Settlement Procedure Act [12 U.S.C.A. § 2601 et seq.] in absence of any allegation that any of loan proceeds were used to finance purchase or transfer of legal title of real property, and in view of regulation exempting transaction that was subject of lawsuit based upon 25-acre maximum limitation. Real Estate Settlement Procedures Act of 1974, § 2 et seq., 12 U.S.C.A. § 2601 et seq.

Clarence J. Dau and Geraldine A. Dau, pro se.

Donald E. O'Brien, Chief Judge, Iowa. William R. King, Steven L. Nelson, Des Moines, Iowa, for defendants.

ORDER

DONALD E. O'BRIEN, Chief Judge.

The Court has before it defendants' motion to dismiss as well as plaintiffs' notice of rescission default. A hearing was held on this matter in Sioux City, Iowa, at which plaintiffs appeared pro se and defendants were represented by counsel. After carefully considering the briefs and oral arguments of the parties, the Court grants defendants' motion to dismiss and vacates plaintiffs' notice of rescission default.

Plaintiffs' complaint contains eight counts, which purport to assert violations of federal and state statutes, federal and state constitutions, and state common law rights arising out of certain secured loan

transactions which occurred in 1983. Apparently, plaintiffs claim that this Court has jurisdiction over this case on the basis of both federal question jurisdiction and diversity jurisdiction. In determining defendants' motion to dismiss, this Court has reviewed documents besides the motion and brief in support of the motion to dismiss. As a result, this Court treats such motion as a motion for summary judgment. Fed.R.Civ.P. 12(b). In its discussion of defendants' motion for summary judgment, the Court will address each of plaintiffs' claims separately.

1. 15 U.S.C. § 1601, et seq.

[1] In Counts I, II, III, IV, VI and VIII, plaintiffs purport to allege claims arising out of the federal Truth in Lending Act, 15 U.S.C. § 1601, et seq. Credit transactions involving extensions of credit primarily for business, commercial or agricultural purposes are expressly exempt from the requirements of subchapter 1 of the Truth in Lending Act, 15 U.S.C. § 1603(1). Agricultural purposes are defined broadly to include the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products, includes the acquisition of farm land, real property from a farm residence, and personal property used primarily in farming, 15 U.S.C. § 1602(s); see also 12 C.F.R. § 226.2(e) (1981). In reviewing plaintiffs' complaint and the documents attached, the Court finds that the loans in question were for agricultural purposes. As a result, the Court finds that plaintiffs have not stated a claim under the Truth in Lending Act. See *K/O Ranch, Inc. v. Norwest Bank of Black Hills*, 748 F.2d 1246, 1248-49 (8th Cir.1984).

II. 15 U.S.C. § 1692, et seq.

[2] In Counts I and VI of plaintiffs' complaint, it is alleged that defendants violated the federal Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. Under the Debt Collection Practices Act, a debt collector is defined as "any person who uses any

THE REPRODUCTION
OF THIS DOCUMENT
CANNOT BE
IMPROVED DUE
TO THE
CONDITION OF THE
ORIGINAL